82-835

No. ———

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

———

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,
Appellee-Plaintiff.

———

ON APPEAL
FROM THE KENTUCKY COURT OF APPEALS

———

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I hereby certify that 3 copies of the foregoing Petition has been served by the United States mail, upon: Mr. Richard Nelson, 11 W. 6th Street, Covington, Kentucky 41011, this ..... day of October, 1982.

.....
PATRICIA THOMPSON, Pro Se

.....
EDDIE THOMPSON, JR., Pro Se

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QUESTIONS PRESENTED

1. Was the hiring of police officers and others by the Bank (Appellee), to use force, terror, and violence to gain possession of the Thompsons' (Appellants) real property in a mortgage foreclosure, and to criminally prosecute the Trompsons (Appellants) to aid in the wrongful foreclosure a violation of the Thompsons' (Appellants) constitutional rights – 4th, 5th, and 14th Amendments to U.S. Constitution?

2. Could there be a valid foreclosure sale without an appraisal, or alternately, where the Bank (Appellee) refused the mortgage payments and returned the mortgage payments to the Thompsons (Appellants)?

3. Could one panel of Court of Appeals overrule another panel in the same case on the same issue?

4. Is the denial of a Motion to relieve a party from a Final Judgment, order or proceeding a final appealable order?

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No. ————

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PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,
Appellee-Plaintiff.

ON APPEAL
FROM THE KENTUCKY COURT OF APPEALS

OPINION BELOW

Amended Notice of Appeal was filed in the Kentucky Court of Appeals on October 5, 1982. App. p. 1a.

A Request to submit the record to the U.S. Supreme Court was filed in Kenton Circuit Court on September 23, 1982. App. p. 3a

The Kentucky Supreme Court denied Appellant's Motion for discretionary review on August 24, 1982. App. p. 5a.

The Kentucky Court of Appeals denied Appellants-Thompsons Motion for reconsideration of Order dismissing Appeal on May 5, 1982. App. p. 6a.

On March 19, 1982, the Kentucky Court of Appeals

dismissed Appellants' Appeal and denied Appellants' Motion to correct and/or modify the record. App. p. 7a, 9a.

On January 13, 1982, the Kentucky Court of Appeals denied Appellants' (Thompsons) oral argument pursuant to Kentucky CR. 76.16 (D) (an arbitrary rule). App. p. 11a.

On December 1, 1981, the Kentucky Court of Appeals denied Appellee (Bank) Motion to reconsider its Order of October 12, 1981, denying Appellee's Motion to dismiss App. p. 12a.

On October 12, 1981, the Kentucky Court of Appeals denied Appellee (Bank) Motion to dismiss Appeal and denied Appellants-Thompsons' Motion for leave to permit oral arguments. App. p. 13a.

On June 17, 1981, (after a hearing which the court declined to transcribe) the Kenton Circuit Court denied Appellants (Thompsons) Motion to set aside (a) mortgage foreclosure sale, (b) order confirming sale, (c) cancel deeds made (entered) pursuant thereto, and (d) writs of possessions entered thereafter. App. p. 14a, Rec. p. 54.

JURISDICTION

The gravaman of Appellants-Thompsons complaint is that Appellants (hereinafter referred to as the Thompsons) were defrauded and deprived of their property (real and personal) in a foreclosure action, without due process of law or equal protection of the law, in contravention of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

The Thompsons only assert the constitutional right to have their position examined by a tribunal, whose province it is to construe the Constitution and Laws of the Union. *Martin* v. *Hunter's Lessee,* I WHEAT 304.

The Thompsons are Negroes and the only family in

Kentucky, if not the Continental United States, in this day and age where Appellee-Bank (hereinafter referred to as Bank) has used force, fraud, terror, and violence to forcibly and wrongfully take property from the Thompsons (mortgagors), including their equity in the real property and their (Thompsons) chattels and papers.

Before the Bank commenced the foreclosure action in August 1976, the Bank had refused the Thompsons mortgage payments in June 1976; returned the Thompsons mortgage payments when mailed to Bank (App. p. 21a); and the Bank and/or its attorney, Mr. Richard Nelson, had arranged for a City of Covington police officer, Jim Mercer, to file false criminal charges against Eddie Thompson, resulting in a true bill from the Kenton County Grand Jury on/or about April 14, 1976. App. p. 39a, Rec. p. 57, 58 Exhibits. (We may note that the Deputy Court Clerk E. Nienaber wilfully neglected to index the Exhibits presented to trial court for hearing on the Thompson's Motion on June 15, 1981, in violation of Ky. CR. 75.07.) (App. p. 27a, 37a. Rec. p. 47-57.) These false charges were filed to harass and discredit the Thompsons, so that they (Thompsons) would be unable to muster counsel to defend the wrongful foreclosure action. The false charges remained for over 2 years and were not dismissed until new false charges were brought by an attorney hired by the Bank, Richard Slukich, and police officers hired by the Bank. The Bank admits hiring these police officers at the rate of $5 an hour and giving Mr. Slukich a deed. App. p. 20a, 27a, 29a; Rec. p. Exhibits Attached to Record Page 57-58. Note: Exhibits not indexed, in violation of 75.07 (10).

The question then is whether the hiring of police officers and a second attorney, by the Bank, to use force, terror, and violence to gain possession of the Thompsons real property in a mortgage foreclosure action and to criminally

prosecute the Thompsons to aid in the wrongful mortgage foreclosure were violations of the Thompsons constitutional rights pursuant to the United States Constitution Fourth, Fifth, and Fourteenth Amendments.

A cause of action and damages remedy can be implied directly under the Constitution when the due process clause of the Fifth Amendment is violated. *Davis* v. *Passman*, 442 U.S. 228; *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388.

The involvement of state officials . . . provides the state action to show a direct violation of . . . Fourteenth Amendment, equal protection rights, whether or not the actions were officially authorized or lawful.

Adickes v. *Kress & Co.*, 398 U.S. 144; *U.S.* v. *Price*, 383 U.S. 787, 794, *Monroe* v. *Pape*, 365 U.S. 167.

The jurisdiction of the U. S. Supreme Court to review the decision of the Kentucky Court of Appeals on Appeal is conferred by 28 U.S.C. 1257 (2). In addition to the aforementioned cases, the following decisions sustain the jurisdiction of the Supreme Court to review this case:

1. *Briscoe* v. *Levi*, 53 LEd 2d 439
2. *Clume* v. *United States*, 159 U.S. 590
3. *Dolton* v. *Cain*, 20 LEd 830
4. *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238
5. *Iron Mountain and Helena Railroad* v. *Johnson*, 119 U.S. 608
6. *Kalb* v. *Fuerstein*, 89 LEd 370
7. *Klapport* v. *U.S.*, 335 U.S. 601
8. *Martin* v. *Hunter's Lessee*, 1 WHEAT 304
9. *NAACP* v. *Alabama*, 357 U.S. 449
10. *Pennoyer* v. *Neff*, 95 U.S. 773
11. *Shelley* v. *Kraemer*, 334 U.S. 1
12. *Williams* v. *Oklahoma*, 395 U.S. 458

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any

person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

28 U.S.C. 1257(2)

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

CONSTITUTIONAL AND STATUTORY PROVISIONS

KENTUCKY

Kentucky Constiution, Sec. 115

In all cases, civil or criminal, there shall be allowed as a matter of right at least one appeal to another court.

K.R.S. 426.200(3)

Before a sale of land, the officer shall have the land appraised, under oath, by two (2) disinterested, intelligent housekeepers of the county . . . The appraisal shall be in writing, signed by the persons making it, and returned with the execution. The officer shall refer to and explain the proceeding in his return on the execution, which return shall be recorded in full.

K.R.S. 426.520(2)

The appraisal made shall be in writing, signed by the persons making it, and returned by the commissioner or officer of the court which made the order or rendered the judgment for the sale of the property. The appraisal shall be filed among the papers of the cause in which the judgment was rendered or the order made, and entered on the records of the court.

K.R.S. 426.525

Foreclosure of a mortgage is forbidden; provided, however, that this section shall not preclude a mortgage after default from taking possession of property subject to the mortgage which has been abandoned by the mortgagor, for the purpose of preserving and maintaining the same, harvesting crops, or letting the same, all to the account of the mortgagor; and any reasonable expenses incident thereto including taxes and insurance shall be added to the principal of the mortgage, and secured by it. For the purpose of this section, property shall be deemed to have been abandoned when the mortgagor has moved from the property and when by the nature of the property in question when further neglect or failure to attend will decrease its value. Any right a mortgagee acquires in a tenant's interest in crops raised on shares is inferior to any prior existing lien of the landlord on the tenant's interest. Nothing in this section shall be construed as conflicting with the provisions of K.R.S. 383.110 (c.c. 375: Trans. Act 1952, CH. 84, Sec. 1; Amend. Acts 1972, CH. 90, Sec. 1).

Kentucky Supreme Court Rule 103(8)(A) Precedents

The Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court.

Kentucky Civil Rules

CR. 75.07 (1) The clerk of the trial court shall prepare and certify the *entire original* record on file in his office in accordance with the requirements of paragraphs (9) and (10) of this Rule 75.07. . .

CR. 75.07 (9) All parts of the writen record on appeal shall be arranged in the order in which they were filed or entered. If the record comprises more than 150 pages, it shall be divided into two or more volumes not exceeding 150 pages each. Each volume shall be securely bound at the left side.

CR. 75.07 (10) There shall be a general index at the beginning of the record and an index to each volume in the front thereof which shall show, in the order in which they appear, the pages on which all pleadings, orders, judgments, instructions, and papers may be found, together with the name of each witness and the pages on which his examination and cross-examination appear. All exhibits filed with the record shall be sufficiently identified and the index shall direct where they may be found.

CR. 76.12 (8) (a) A brief may be stricken for failure to comply with any substantial requirement of this Rule 76.12 (8) (2).

CR 76.16 (4) A person who is not a licensed attorney at law will be permitted to make an oral argument only with leave of the court.

CR. 76.34 (A) In addition to any other relief provided by these Rules, an adversary party may move to dismiss an appeal or cross-appeal because it is not within the jurisdiction of the appellate court or because it has not been prosecuted in conformity with the rules;

CR. 76.34 (b) Timely filing of a motion to dismiss suspends the running of time for procedural steps otherwise required with regard to the appeal and any cross-appeal in the same proceeding, and time will continue to run as provided by Rule 76.12 (2) after the date an order is entered, denying the motion or passing to the merits.

CR. 76.38 (2) Unless otherwise provided by these Rules or ordered by the court, a party adversely affected by a decision rendered by order may within 10 days after the date of its entry move the court to reconsider it. On ex parte motion the court may suspend the effectiveness of such order pending disposition of the motion to reconsider. The timely filing of a motion to reconsider an order granting or denying a motion to dismiss shall suspend the running of time to the same extent as provided by Rule 76.34(6) (b) with respect to the filing of a motion to dismiss.

STATEMENT OF FACT

In June 1976, the Bank refused the Thompsons' mortgage payments to create a delinquent mortgage account on the Thompsons' home; returned payment when mailed in (App. p. 21a) ; and neglected to carry out an oral agreement on a rehab project. The properties had no connection except that the Thompsons owned both properties.

The Bank had already had criminal charges filed against Eddie Thompson in April 1976 (App. p. 39a) and on August 27, 1976, filed a foreclosure action.

There was no appraisal of the Thompson property as required by Kentucky State Law K.R.S. 426.200, K.R.S. 426.520.

After the Thompsons complained, a Statement of Appraisement was entered on the record. App. p. 33a; Rec. p. 28-29.

The Statement of Appraisement does not meet the statutory requirements of this state. App. p. 33a. The Appraisers admit they were not inside the property.

The record has been tampered with to conceal the exact time sequence of the Statement of Appaisement appearance upon the record – a violation of C.R. 75.07.

Immediately following the foreclosure, the Bank filed a forcible detainer action in the Kenton Quarterly Court to gain possession of the Thompson home. App. p. 35a, 37a; Rec. p. 47-52 Exhibit. (We may note the Exhibits are not indexed – a violation of 75.07.) That action was appealed to the Kenton Circuit Court, by the Thompsons, where, when the Bank recognized its fraudulent activities may be uncovered, the Bank moved to dismiss, with prejudice, its claim for the Thompson home. App. p. 35a, 37a; Rec. p. 47-52 Exhibits. This was done, and the Bank readily concedes the Bank lost that action. (Note: Exhibits not indexed in the record)

The Order of June 17, 1981, denying the Thompsons' Motion to set aside the illegal foreclosure was the second said motion. The first Motion being filed on March 8, 1978, (Rec. p. 36) and ultimately denied on April 18, 1978, without Notice or hearing. App. p. 31a; Rec. p. 43. (We may note the date is *April 18, 1978* instead of March 28, 1978, as stated in the Opinion and Order of the Court of Appeals dismissing the Appeal.) App. p. 7a, 8a.

The Bank gave the Thompsons no notice because Mr. Nelson knew Eddie Thompson would be in court defending false criminal charges he (Nelson) had arranged.

On at least two occassions Eddie Thompson was arrested on false charges, pre-arranged by Mr. Nelson, while he (Eddie) was attempting to review the record of this case in the Kenton Circuit Court Clerk's office.

Because of undue harassment and false criminal prosecution, the Thompsons were unable to muster defense to the wrongful foreclosure action, or to appeal a CR. 60.02 Motion to set aside the wrongful foreclosure action.

During the time the first Motion was filed and ultimately denied (March 8, 1978 to April 18, 1978), and on or about April 3, 1978, Mr. Nelson wrote the Thompsons a letter advising them that ". . . the Writ of possession issued from the Circuit Court on October 19, 1977, is a final order . . . We can proceed in the same manner again . . . and have a moving company just move you out of the house while my clients take possession . . . If I do not hear from you in writing within 10 days . . . we intend to proceed without further notice, as such as not required." App. p. 27a, 28a, 29a; Rec. p. 57-58 Ex. III Trans. p. 85-86. (We may note again the Exhibits were not indexed by the Court Clerk – a violation of CR. 75.07 (10) –)

When Eddie Thompson called Mr. Nelson a couple of days later and informed him that they (Thompsons) were

not leaving their home, Mr. Nelson informed Eddie Thompson that he (Nelson) would have him (Eddie) "taken care of." When Eddie Thompson asked Mr. Nelson what he meant, Mr. Nelson hung up.

On April 12, 1978, the Bank had Judge Goodenough to sign a void writ and order of possession. App. p. 23a; Rec. p. 42.

Even though the record has been tampered with, it is clear from the record that no application was made to the Kenton Circuit Court for a writ and order of possession signed on April 12, 1978.

On April 15, 1978, 3 Covington police officers beat (Eddie) Thompson and brought false criminal charges against him (Eddie). One of the police officers (T. Finan) threatened to put (Eddie) Thompson "in the river."

Mr. Nelson admits he and the Bank hired the police officers (including T. Finan). App. p. 19a, 20a, 27a, 29a; Rec. p. (*Exhibits not indexed by E. Nienaber*) CR. 75.07 (10)

On July 19, 1978, while the Thompsons were at work, the Bank had the sheriff to execute the void April 12, 1978, writ and order of possession – App. p. 23a; Rec. p. 42 – by setting the Thompsons possessions upon the street.

On July 19, 1978, (Eddie) Thompson visited Judge Daniel Goodenough's chambers to ascertain the validity of the April 12, 1978, writ and order of possession.

On July 19, 1978, Judge Daniel Goodenough had no explanation for the April 12, 1978 writ and order of possession, whereupon the Thompsons returned home and commenced putting their personal chattel and papers back into their home.

At this point, two police officers produced a lease agreement. (A lease agreement between the police officers and the Bank) App. p. 45a; Rec. p. not indexed. These police officers threatened to arrest the Thompsons for criminal

trespassing if they (the Thompsons) did not leave their (Thompsons) home.

The Bank had actually arranged for a police officer to 'accidentally' harm (Eddie) Thompson. The lease carried the stipulation "Not responsible for accidents on premises." Ex. App. 45a.

On July 20, 1978, Mr. Nelson, attorney for the Bank, filed an affidavit claiming he (Nelson) had inadvertently inserted April 12, 1978, instead of July 12, 1978, when in fact, Judge Goodenough signed and inserted the date as April 12, 1978. App. p. 25a; Rec. p. 45. Why would the Judge sign an order on July 12, 1978, when the order had already been filed by the clerk on July 7, 1978.

Armed police officers hired by the Bank took over and occupied the Thompson home on July 19, 1978 on a 24-hour-a-day basis remaining until July 27, 1978, when friends of the Thompsons presented a petition to the Mayor and City Commissioners, demanding to know why police officers were occupying the Thompsons home.

The Thompsons slept in neighbors' yards until the police officers left on July 27, 1978, then moved back into their (Thompson) home.

On July 29, 1978, Mr. Richard Slukich, another attorney hired by the Bank, came by the Thompson home and told (Eddie) Thompson that he (Slukich) had bought the Thompson's home from the Bank. App. p. 27a, 29a; Rec. p. *Exhibits not indexed* CR. 75.07 (10)

Mr. Slukich could not produce a deed, but he (Slukich) did on July 29, 1978, have (Eddie) Thompson arrested and charged with criminal trespass and burglary in the first degree.

The Bank was able to get as a condition of (Eddie) Thompson's bond in Kenton District Court that "Eddie cannot go home" – property in question here.

At the criminal trespass trial on the charges brought by Mr. Slukich, Mr. Slukich testified he owned the Thompson home, and Mr. Slukich served as assistant prosecutor at the trial.

Mr. Nelson sent word to the Thompsons that the burglary first degree charge would be dropped if the Thompsons would forget about their home. After 2 appearances before the Kenton County Grand Jury, the charge was dismissed by the Grand Jury in 1979.

To gain entrance to the Thompson home, subsequent to July 29, 1978, the Bank hired persons unknown to the Thompsons to break into their home and change the locks on the doors, while a City of Covington police officer, paid by the Bank, stood watch. All of the Thompsons' chattels and papers were in their (Thompsons) home.

As of today, the Thompsons have no knowledge of the whereabouts of their personal possessions.

After the Thompsons personal possessions were taken and Mr. Slukich completed his criminal prosecution of (Eddie) Thompson, the Bank sold the Thompson home for $48,500.00. The Bank allegedy bought the Thompson home for $14,500.00. App. p. 41a, 42a, The Bank also retained the $5,952.60 equity ordered paid to the Thompsons. App. p. 41a, 42a; Rec. p. 18.

Mr. Nelson and Mr. Slukich are not parties to *this* action but are mentioned as background.

To further complicate matters, on August 21, 1981, E. Nienaber made a misstatement to the Kentucky Court of Appeals by certifying that the record was completed and certified in accordance to Ky. CR. 75.07. App. p. 16a; Rec. p. *Certification*.

At some later date, E. Nienaber made another certification dated August 21, 1981. App. p. 17a, 18a. This certification was not served upon the Thompsons.

When the record was requested by the Kentucky Court of Appeals, E. Nienaber presented 2 records in violation of Ky. CR. 75.07 – a record by E. Nienaber, App. p. 16a and a supplemental record by E. Settles, App. p. 43a, 44a. E. Nienaber and E. Settles are the same person.

It was obvious that the certification mailed to the Kentucky Court of Appeals on August 21, 1981, App. p. 16a, and the later certification dated August 21, 1981, App. p. 17a, 18a, were not the same. The Kentucky Court of Appeals refused to correct and/or modify the record. App. p. 7a, 9a. The Kentucky Court of Appeals denied two motions by the Bank to dismiss this Appeal. App. p. 12a, 13a. And denied the Thompsons oral arguments – Ky. CR. 76-16.D App. p. 11a, 13a.

In spite of the fact that fraud by the Bank perpetuated itself in the Kentucky Court of Appeals, the Court struck the Thompsons' brief (Ky. CR. 76.12 (8) (A) and dismissed the Appeal. (Ky. CR. 76.34 (6) (A). App. p. 7a, 9a. This was contra to the Court's ruling in *Bell* v. *Lindsey Wilson College*, 490 S.W. 2d 145 and 79-CA-1456-MR, App. p. 35a, where the Court had ruled that the Bank had prejudiced its rights to possession of the property at issue here. App. p. 35a, 37a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Was the hiring of police officers and others, by the Bank, to use force, terror, and violence to gain possession of the Thompsons-Appellants real property in a mortgage foreclosure action, and to criminally prosecute the Thompsons (Appellants) to aid in the wrongful foreclosure, in contravention of their (Thompsons-Appellants) constitutional rights?

United States Constitution, 4th, 5th, and 14th Amendments.

Looking at the question, based upon the facts and principles involved, it seems to be opposed to all of the principles upon which the rights of citizens hinge.

In such case there is no safety for the citizen, except in protection of the *Judicials*, for rights which have been invaded by officers . . . (of the law) . . . professing to act for it. There remain to him, but the alternative of resistance which may amount to a crime. *Bivens Supra* 91 US 2004; *Monroe* v. *Pape*, 365 U.S. 167; *U.S.* v. *Lee*, 106 U.S. 196, 219.

It was an abuse of a penal statute relating to criminal trespass to use it to try disputed rights in real property. *State* v. *Larson*, 143 N.E. 2d 502.

And the hiring of police officers by the Bank (App. p. 19a, 20a, 27a, 29a; Rec. p. *Exhibits not indexed*) provided the state action to show a direct violation of the Fourteenth Amendment equal protection rights, whether or not the actions were officially authorized or lawful. *Adickes* v. *Kress & Co.*, 398 U.S. 144; *Monroe* v. *Pape, Supra*. . . . Any person in peaceful and quiet possession of land shall not be turned out by the strong hand, by force, or by terror . . . The policy of the law is to require that party who has in this

manner obtained possession shall restore it to the party from whom it had been so obtained. *Iron Mountain and Helena Railroad* v. *Johnson,* 119 U.S. 608, 30 LEd 504.

Mr. Nelson had let it be known that (Eddie) Thompson would be arrested if he (Eddie) attended any foreclosure sale of their (Thompson) home. And, if there was a sale, it was not a public sale.

Also, the Master Commissioner did not sell according to the judgment and order of sale. Rec. p. 23-27. Example — For purchase price, the Master will take from purchasers: bonds in three (3) equal installments with good and sufficient surety, bearing interest from date of sale and payable to Master. Purchaser to deposit $25.

We say *if* there was a sale because the Thompsons never got the equity ordered paid to them. App. p. 41a, 42a; Rec. p. 31.

The Thompsons had no notice of any *hearing* on the April 12, 1978, writ and order of possession, App. p. 23a, 24a, or order of April 18, 1978, denying any Rule 60.02 Motion. App. p. 31a, 32a; Rec. 43, 44. The Bank saw to that!

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense . . . *Pennoyer* v. *Neff,* 95 U.S. 773, . . . Must be granted at a meaningful time and in a meaningful way. *Fuentes* v. *Shevin,* 407 U.S. 67 . . . And appropriate to the nature of the case. *Mullane* v. *Central Hanover B & T Co.,* 339 U.S. 306, 320.

Could there be a valid sale without appraisal or alternatively, where mortgagee refused payment and returned mortgage payments to mortgagor?

It is an admitted fact that the Bank refused the Thompsons payments. App. p. 21a, 22a; Rec. p. *Exhibits not indexed.* The Master Commissioner summed it up as "a misunderstanding between the parties." Supplement Rec. p. 18. The Master Commissioner wilfully neglected to be specific.

If the party offered to pay, was ready to pay, and it would not be accepted, it defeated the sale as much as payment. *Atwood* v. *Weens,* 99 U.S. 183, 187; *Bennett* v. *Hunter,* 9 WALL. 326.

Where it is clear that a tender made will not be accepted, it need not be kept good or paid into court. *Carmichael* v. *Rice,* 158 p. 2d 290; *Dolton* v. *Cain,* 20 LEd 830.

When we consider that the Bank reportedly paid $14,500.00 for the Thompson property (App. p. 41a, 42a; Rec. p. 31) and sold it to a family on welfare for $48,500.00, a $34,000.00 difference, we know fraud was intended.

Let us also consider the fact that the Bank never paid the $5,952.60 ordered paid to the Thompsons by the Court. App. p. 41a, 42a; Rec. p. 31.

Under Kentucky law, the mortgagee must make an accounting to mortgagor for actual value instead of selling value of property. *Aultman and Taylor Co.* v. *Mead,* 121 Ky 241.

No accounting has been made in this case.

In this state, a judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *K.R.S. 426.525, Springfield Fire and Marine Ins. Co.* v. *Phillips,* 16 K.L.R. (Abstract) 390 . . . Nor does the mortgage convey an estate in the land to the mortgagee. *Morgan* v. *Wickliffe,* 24 K.L.R. 1039, 70 S.W. 680.

The appraisers admit they were unable to gain entrance to the Thompson home. App. p. 33a, 34a; Rec. p. 28. And the appraisers were never inside the property.

To sell land under execution without appraisement is void . . . as no coercise sale for debt can be lawfully made. *Angel* v. *Byars,* 153 Ky 208, *Adams* v. *Napier* (Ky. 1960) 334 S.W. 2d 915.

The Bank lost its legal right to possession of the Thompson property when it asked for dismissal with prejudice of its forcible detainer action 79-CA-1456-MR. App. p. 35a, 37a.

Judgment for defendants in action of ejectment to recover possession . . . had the effect of denying plaintiff's claim of title to land in dispute. *Hub Bel Air, Inc.* v. *Hirsch,* 102 A 2d 550.

Could one panel of court of appeals overrule another panel of court of appeals in the same case on the same issue?

From time immemorial "record on appeal" has been defined as thus: In the practice of appellate tribunals, the history of the proceeding on trial of the action below (with the pleading, offers, objections to evidence, ruling of the court, exceptions, charges, etc.) insofar as same appears in the record furnished to appellate court . . . insofar as they were taken, prosesented or allowed in formal and proper manner necessary to put them upon the record of the court. *Clume* v. *United States,* 159 U.S. 590.

To defeat this pronounciation, Deputy Clerk, E. Nienaber, had made at least 3 diffferent certifications of the record. App. p. 15a, 16a, 17a, 18a, 44a Record Certification. The certifications are in violation of Ky. CR. 75.07 and were intended to conceal the fraud being practiced upon the Thompsons and the Court.

We may note that some Exhibits are missing from the record, some reindexed, and others not indexed at all.

The Kentucky Court of Appeals arbitrarily denied the Thompsons oral argument pursuant to Kentucky CR. 76.16 (4). App. p. 11a, 13a.

Oral arguments, . . . are encouraged by appellate courts in that they assist reviewing court to fuller understanding of theories and issues on appeal. *Edmonds* v. *Stratton* (MO. 1970) 457 S.W. 2d 228.

The Kentucky Court of Appeals denied 2 motions by the Bank to dismiss the Thompson appeal. App. p. 12a, 13a. 76.34 (6) (A), 76.38 (2).

A motion to dismiss requires a consideration of the merits of an appeal 79-CA-1456-MR. App. p. 38a. When the Court of Appeals dismissed the Thompsons appeal its action was contrary to its ruling in *Bell* v. *Lindsey Wilson College*, 490 S.W. 2d 145, 79-CA-1456-MR. App. p. 35a, 37a and Ky. SCR 103 (8) (A).

Under doctrine of law of the case, one panel of an appellate court would be bound by decision of another panel considered to be erroneous, but where explanation for the prior panel's ruling is not given, it would be presumed that the ruling was not erroneous; that presumption defines the boundaries of law of the case inquiry. *Key* v. *Wise*, 629 F 2d 1049.

A recent opinion . . . of court of appeals . . . may not be overruled by another panel of judges, but only by the full court. *Mollory* v. *U.S.*, 259 F 2d 801, *Sikora* v. *American Can Co.*, 622 F 2d 1116.

The denial of an appeal is an unconstitutional restriction of the rights of the appellant. *Kentucky Constitution*, Sec. *115 Cole* v. *Stephens*, 582 S.W. 2d 657 and where there was no review of the record, no search for reversible error by the court below and no determination of whether

defendant received a fair trial . . . the defendant has not had the benefit of an appeal. *Taylor* v. *Commonwealth*, 568 S.W. 2d 52.

The burden of showing an appeal is frivolous is on the party making such suggestion. *Coppedge* v. *U.S.*, 369 U.S. 438.

A decision of a state appellate court which despite a statute providing for an appeal as a matter of right wholly denies any right of appeal is an "Unreasonable distinction" which the Fourth Amendment forbids states to make. *Williams* v. *Oklahoma*, 395 U.S. 458.

A state cannot in exercise of its control over local law and practice, vest state court with power to violate the supreme law of the land. *Kalb* v. *Feuerstein*, 308 U.S. 433, 439.

Generally, any acts, which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration or rules developed by the courts and follows under doctrine of state decisis, are in "excess of jurisdiction" is so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari. *Abellira* v. *District Court of Appeal, Third District*, 109 P. 2d 942 and in determining whether state action is violative of the due process clause of the Fourteenth Amendment it is immaterial whether the state has acted solely through its judicial branch, since whether legislative or judicial branch, it is still the application of state power which must be scrutinized. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449.

Is the denial of a motion to relieve a party from final judgment, order, or proceeding a final appealable order?

In considering whether a petition to set aside a judgment was improperly dismissed, undenied allegations must be accepted as true. *Klapport* v. *United States,* 335 U.S. 601.

Where issue was purely one of law, it could be decided on appeal even though district (lower) court refused to consider on grounds it was not ready for adjudication. *Briscoe* v. *Levi,* 53 LEd 2d 439; *Silas* v. *Sears, Roebuck & Co.,* 586 F 2d 382; *Kentucky Workman's Compensation Bd.* v. *Alexander,* 562 S.W. 2d 670; *Bell* v. *Lindsey Wilson College,* 490 S.W. 2d 145; *Salitan* v. *Dashney,* 347 P 2d 974, 81 ALR 2d 53; *Metropolitan Life Ins. Co.* v. *Myers,* 109 S.W. 2d 1194.

In a case of this kind where there is and can be no question that gross fraud has been committed and money (and property) obtained unjustly from another, technicalities of interpretation or refinement of distinction should not and will not be permitted to embarrass the court in exercising its power to do justice. *Metropolitan Life Ins. Co. of New York* v. *Myers,* 270 Ky. 523, 109 S.W. 2d 1194.

The record in this case is replete with evidence of fraud on the part of appellee, and it would be a waste of time to discuss it further except to say, insofar as this action is concerned, Appellee's failure to contest Appellants' issue and facts in brief (to Kentucky Court of Appeals) is conclusive of the only question presented, and the trial court erred in adjudging otherwise. *Webb* v. *Nicely,* 286 Ky 632, 151 S.W. 2d 768.

Equitable relief against fraudulent judgment is not of statutory creation, but is judicial devised remedy fashioned

to relieve hardship which from time to time arises from a hard and and fast adherence to court made rule that judgment should not be disturbed after the term of their entry has expired. *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238.

CONCLUSION

Among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are rights to acquire, enjoy, own, and dispose of property. *Shelley* v. *Kraemer*, 92 LEd 1161, 334 U.S. 1.

After confirmation of a judicial sale, a court of chancery is authorized to set aside the sale where a proper case is presented by direct proceeding for the purpose, provided that the grounds be sufficient to justify the court in applying equitable relief. *CR. 60.02, Maynard* v. *Maynard*, 167 S.W. 2d 853; *Kalb* v. *Fuerstein*, 84 LEd 370.

Wherefore, the Thompsons are entitled to a Judgment declaring null and void the foreclosure sale of April 21, 1977, the Order confirming the sale (June 27, 1977), and the deeds and writs and order of possession entered thereafter, and any other good and proper relief they (the Thompsons) are entitled.

PATRICIA THOMPSON, Pro Se
EDDIE THOMPSON, JR., Pro Se

APPENDIX

EXHIBIT A

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

(81-CA-1671-MR)
82-SC-427-D

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
Appellants,

vs.

PEOPLES LIBERTY BANK
Appellee.

Kenton Circuit Court – No. 31053

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed October 5, 1982)

Notice is hereby given that Patricia and Eddie Thompson Jr., Appellants above named, hereby appeal to the Supreme Court of the United States, from the Opinion and Order dismissing Appeal entered on March 19, 1982. Order denying Motion to Reconsider was entered on May 4, 1982. Discretionary Review denied on August 24, 1982.

This Appeal is taken pursuant to 28 U.S.C. 1257 (2).

/s/ EDDIE THOMPSON, Jr.
EDDIE THOMPSON, JR., Pro Se

P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON, Pro Se

P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

C. C. Richard Nelson
Kenton Circuit Clerk, Ed. F. Schroder
Clerk Ky. Court of Appeals, John C. Scott
Clerk, Ky. Supreme Court, John C. Scott.

[CERTIFICATION OMITTED]

EXHIBIT A-1

KENTON CIRCUIT COURT

No. 31053
81-CA-1671-MR
82-SC-427-D

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,

Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,

Appellee-Plaintiff.

REQUEST TO CLERK TO CERTIFY AND TRANSMIT ENTIRE RECORD TO UNITED STATES SUPREME COURT

(Filed September 23, 1982)

TO: MR. ED. F. SCHROEDER, KENTON CIRCUIT CLERK

Pursuant to the provisions of Rule 13.1 of the Rules of the Supreme Court of the United States, you are requested to certify and transmit to the Supreme Court of the United States the entire record of the proceedings herein. This would include the record certified to the Court of Appeals

by E. Nienaber and the supplemental record certified to the Court of Appeals by E. Settles.

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON, Pro Se

736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

/s/ EDDIE THOMPSON, JR.
EDDIE THOMPSON, JR., Pro Se

736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

[CERTIFICATION OMITTED]

EXHIBIT B

SUPREME COURT OF KENTUCKY

82-SC-427-D
(81-CA-1671-MR)

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,
Movants,

vs.

PEOPLES LIBERTY BANK,
Respondent.

Kenton Circuit Court – No. 31053

ORDER DENYING MOTION FOR DISCRETIONARY REVIEW

The motion of Patricia Thompson and Eddie Thompson, Jr. for a review of the decision of the Court of Appeals is denied.

O'Hara, J., not sitting.

ENTERED August 24, 1982.

/s/ JOHN S. PALMORE
Chief Justice

EXHIBIT C

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 81-CA-1671-MR

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

Appeal From Kenton Circuit Court
No. 31053

ORDER DENYING MOTION TO RECONSIDER

BEFORE: WHITE, LESTER, and WILHOIT

Having considered the appellant's motion to reconsider our order of March 19, 1982, the Court ORDERS that the motion to reconsider be, and it is hereby, DENIED.

ENTERED: 5-4-82.

/s/ JOHN D. WHITE
JUDGE, COURT OF APPEALS

EXHIBIT D

OPINION RENDERED: March 19, 1982; 2:00 p.m.
Not to be published

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 81-CA-1671-MR

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,
Appellants,

vs.

PEOPLES LIBERTY BANK,
Appellee.

Appeal From Kenton Circuit Court
Honorable Daniel J. Goodenough, Judge
Action No. 31053

OPINION AND ORDER DISMISSING APPEAL

BEFORE: WHITE, LESTER and WILHOIT, Judges.
WHITE, JUDGE. This appeal arises from the entry of an Order of the Kenton Circuit Court on June 17, 1981, denying relief to appellants, who sought to set aside a mortgage foreclosure sale (April 21, 1977), the Order confirming the sale (June 27, 1977), and to cancel the deeds to the purchaser and the Writs of Possession entered thereafter.

Unfortunately, the case for the appellants throughout the trial in the Circuit Court and now on appeal has been practiced *pro se*. Not only is there considerable confusion injected into what steps were really taken and the relief sought by appellants at the various stages of this litigation, but procedurally it has resulted in a situation in which the appellants have closed doors that might have been open to them at one time by pursuing strategy that was at the time inappropriate.

In the first place, no steps were taken by appellants immediately following the Judgment and sale to set it aside or to appeal at that time. It was not until an Order for a Writ of Possession was filed and sought to be executed by the purchaser at the judicial sale that appellants moved to quash the Writ and, being overruled, appealed that ruling. That appeal resulted in affirming the trial court's Order.

On March 8, 1978, the appellants filed a CR 60.02 motion to vacate and set aside the Order confirming the final report of the Commissioner on July 18, 1977, and the Order granting Writ of Possession on October 19, 1977. No attack was filed against the Judgment and Order of sale, and when these motions were overruled on March 28, 1978, no appeal was taken, assuming *arguendo* that one might have been proper.

Then in 1980 the appellants attempted to gain in the Federal District Court of the Eastern District of Kentucky some desired relief respecting this property. Though reference is made to such action in this record, there is no evidence of resulting benefit obtained; since this appeal is being prosecuted we must assume the Federal relief was not favorably granted.

Finally, on May 1, 1981, appellants again sought to assert a CR 60.02 motion (although it is not designated

as such): (a) to set aside the mortgage foreclosure sale, (b) to set aside the Order confirming sale, (c) to cancel deeds made pursuant thereto, and (d) to set aside the Writs of Possession entered thereafter. In support of such, the motion asserts 43 statements of purported law and facts to justify relief. On June 17, 1981, the trial court denied the motions "because these motions have been previously ruled on by the Court and denied, and the Court does not have jurisdiction of the matter." Hence this appeal.

Although we recognize the extent to which the appellants must have labored in an attempt to present their case to this Court, the unfortunate result is that the brief is devoid of anything of legal relevance. From their personal involvement in the case, appellants may know what issues have been raised for our review; however, nothing in their brief serves to enlighten us on these matters.

In order to preserve accessibility to the courts of this Commonwealth, those proceeding *pro se* have been given significant latitude and have not been required to conform to the exacting standards mandated for those whose education and practice have trained them for the legal profession.

Nevertheless, such latitude has limits. The Court is not to be charged with appellants' responsibility to present and develop the issues in a reasonably coherent manner. Without such presentation there can be nothing to review, and we are resigned to do no more than to strike the brief and dismiss the appeal. CR 76.12 (8) (a), 76.34 (6) (a).

The appellants have filed a motion, subsequent to appeal, to correct and/or modify the record. We have reviewed this motion together with the affidavit attached and, being sufficiently advised, it is ORDERED that the motion be, and it is hereby, DENIED.

For the foregoing reasons the Court ORDERS that this appeal be, and it is hereby, DISMISSED.

ALL CONCUR.

/s/ JOHN D. WHITE
JUDGE, COURT OF APPEALS

ENTERED: March 19, 1982

ATTORNEYS FOR APPELLANTS:

Patricia Thompson and
Eddie Thompson, Jr., *Pro Se*
736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41011

ATTORNEY FOR APPELLEE:

Richard S. Nelson
11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41011

EXHIBIT E

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 81-CA-1671-MR

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,
Appellants,

vs.

PEOPLES LIBERTY BANK,
Appellee.

Appeal From Kenton Circuit Court
Action No. 31053

ORDER

It appearing that the appellant has proceeded pro se, the Court hereby ORDERS that no oral argument be scheduled in the above-styled appeal.

ENTERED: 1-13-82

/s/JOHN P. HAYES
CHIEF JUDGE, COURT OF APPEALS

EXHIBIT F

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 81-CA-1671-MR

PATRICIA THOMPSON
EDDIE THOMPSON, JR.

Appellants,

v.

PEOPLES LIBERTY BANK,

Appellee.

Appeal From Kenton Circuit Court
Action No. 31053

ORDER

Before: HAYES, CHIEF JUDGE, HOWERTON and McDONALD, JUDGES.

The Court, having considered appellee's motion to reconsider this Court's October 12, 1981 order denying motion to dismiss, having further considered appellants' response thereto, and being otherwise sufficiently advised, ORDERS that said motion be, and it hereby is, DENIED.

ENTERED: December 1, 1981

/s/J. W. HOWERTON
JUDGE, COURT OF APPEALS

EXHIBIT G

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 81-CA-1671-MR

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.,
Appellants,

v.

PEOPLES LIBERTY BANK,
Appellee.

Appeal From Kenton Circuit Court
No. 31053

ORDER

BEFORE: HAYES, CHIEF JUDGE, HOWERTON AND MCDONALD, JUDGES.

The Court, having considered appellee's motion to dismiss and the response thereto, and being otherwise sufficiently advised, ORDERS that said motion be, and it hereby is, DENIED. Appellee's brief is due on or before the 23rd day following the date of entry hereof.

Having considered appellants' motions to advance and for leave to orally argue this appeal, and being otherwise sufficiently advised, ORDERS that said motions be, and they hereby are, DENIED.

ENTERED: October 12, 1981

/s/J. W. HOWERTON
JUDGE, COURT OF APPEALS

EXHIBIT H

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK,

Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Defendants.

ORDER

(Filed June 17, 1981)

The instant action is before the court on defendants' Motion to Set Aside (a) Mortgage Foreclosure Sale, (b) Order Confirming Sale (c) Cancel Deeds Made Pursuant thereto; (d) Writs of Possession Entered Thereafter (signed in October 1977 and April 1978, respectively).

Defendants Patricia and Eddie Thompson, Jr. present pro se; Mr. Richard Nelson, attorney for Peoples Liberty Bank, present.

The Court having reviewed the authorities cited by defendants and otherwise being sufficiently advised:

IT IS ORDERED AND ADJUDGED that the Motion/s of defendants is hereby denied because these matters have been previously ruled on by the Court and denied, and the Court does not have jurisdiction of the matter.

This is the 17 day of June 1981.

/s/D. L. GOODENOUGH
JUDGE, KENTON CIRCUIT
COURT, THIRD DIVISION

cc: Patricia & Eddie Thompson, Jr.
Mr. Richard Nelson
Mr. Steve Beshear

EXHIBIT I

AOC-79-075
Commonwealth of Kentucky
Court of Justice
CR 75-07 (5)

KENTON COUNTY
CIRCUIT COURT

Case No. 31053

THE PEOPLES LIBERTY BANK
& TRUST CO.,

Plaintiff,

v.

EDDIE THOMPSON JR. et al.,

Defendant.

NOTICE OF CERTIFICATION OF RECORD ON APPEAL

(Dated August 21, 1981)

This is to notify you that the record on appeal in the above-captioned proceeding has today been completed and certified in accordance with CR 75.07 and will be transmitted to the clerk of the appellate court when so requested by him pursuant to CR 79.06 (7).

Copies of this notification have been served upon all parties to the appeal, and such service has today been noted on the docket pursuant to CR 75.07 (5).

The name or names of counsel for the appellant (s) are as follows: Eddie Thompson, Jr.-Pro Se

Date: August 21, 1981

ED F. SCHROEDER, Clerk
by /s/ E. Nienaber, D.C.

Copies to: [Attorneys for Plaintiff] Richard S. Nelson
[Attorneys for Defendant] Eddie Thompson, Jr. Pro Se
[Clerk, Appellate Court] John C. Scott

EXHIBIT J

NOTICE OF CERTIFICATION OF RECORD ON APPEAL

KENTON COUNTY CIRCUIT COURT

Case No. 31053

THE PEOPLES LIBERTY BANK & TRUST CO.,

vs.

EDDIE THOMPSON, JR., ET. AL

CERTIFICATION OF COURT RECORDS

I, ED SCHROEDER Clerk of the CIRCUIT Court, do certify that the following are true and correct copy (s) of the CERTIFICATION OF A CERTIFICATION OF COURT RECORDS as recorded in the Office of the Circuit Clerk of KENTON County.

In TESTIMONY WHEREOF witness my hand as Clerk aforesaid, this the 21st day of September, 1982

ED SCHROEDER
Clerk

By: /s/M. PARTON D.C.

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF KENTON)

I, Ed F. Schroeder, Clerk of the Kenton Circuit Court do hereby certify that the foregoing Sixty-one (61) pages contains a true and complete transcript of the Clerk's record had in my said court in the case of THE PEOPLES LIBERTY BANK AND TRUST CO. vs. EDDIE THOMPSON, JR. ET AL, as the same is of record and on file in my office and pursuant to the Designation of defendant filed therein.

Witness my hand as Clerk of said Court this 21st day of August, 1981.

ED F. SCHROEDER, CLERK
BY: /s/ E. NIENABER D.C.

AOC-79-060
Rev. 9-79
Commonwealth of Kentucky
Court of Justice

EXHIBIT L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION 79-40

EDDIE THOMPSON, JR., ET AL,
Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL,
Defendants.

ANSWERS TO INTERROGATORIES

Comes now Defendant, Bernard Smith, and submits the following Answers to Interrogatories:

1. Did you lease 736 Highland Avenue, Covington, Kentucky, on or about July 17, 1978.
   answer – Yes.
2. If so, from whom.
   answer – People's Liberty Bank.
3. Were you at the 736 Highland Avenue, Covington, Kentucky address on July 17, 1978, or at any other time.
   answer – Yes.
4. It is alleged that you leased 736 Highland Avenue for $200 per month. Did you.
   answer – Yes.
5. If not, do you know if anyone else leased 736 High-

land Avenue for $200 per month.
answer – Not applicable.

6. It is alleged that you paid police officers $5 an hour to occupy 736 Highland Avenue from July 17, 1978 to some later date. Did you.
answer – No.

7. If not, do you know if any police officers were paid to stay at 736 Highland Avenue.
answer – Yes.

8. Who contacted you and/or other police officers to lease and/or stay at 736 Highland Avenue.
answer – Richard S. Nelson, Attorney for People's Liberty Bank.

9. Give the names of all police officers hired to stay at 736 Highland Avenue.
answer – R. Sterling, J. Liles, J. Gross, E. Schadler, R. Ford, B. Smith, and T. Finan.

10. If you do not know, give the names of those who would know.
answer – Not applicable.

/s/RICHARD S. NELSON
RICHARD S. NELSON

ATTORNEY FOR
DEFENDANT,
BERNARD SMITH

P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

[Certificate of Service Omitted]

I, Bernard Smith, state that I have read the foregoing Answers to Interrogatories and same are true and correct.

/s/BERNARD SMITH
BERNARD SMITH

[Jurat Omitted]

EXHIBIT M

LAW OFFICES OF
RICHARD S. NELSON

JONATHAN A. MASON
Associate

11 West Sixth Street
COVINGTON, KENTUCKY 41011
TELEPHONE 606/291-1511

October 11, 1976

Mr. Eddie Thompson, Jr.
736 Highland Avenue
Covington, Kentucky 41011

Re: Peoples Liberty Bank & Trust Company
vs. Eddie Thompson, et al

Dear Mr. Thompson:

Reference is made to the suit filed against you by my client, The Peoples Liberty Bank and Trust Company.

On October 7th you forwarded to my client two money orders totaling $450.00 with a notation indicating that "These money orders are to pay three months mortgage (July, August and September)". The bank is perfectly willing to accept payments by you but the bank will define, pursuant to the terms of it's mortgage and promissory note, how those payments are to be applied.

I am returning your two money orders. If you desire to forward same to the bank and allow them to apply them as they desire, they will be accepted.

Very truly yours,

/s/RICHARD S. NELSON
RICHARD S. NELSON

RSN/1st
Enclosures

EXHIBIT N

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ET AL.,

Defendants.

WRIT AND ORDER OF POSSESSION

(Filed July 7, 1978)

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within ten (10) days verifying compliance with this Order:

Commonly known as 736 Highland Avenue, Covington, Kentucky, and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the

east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 15 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

DATED at Covington, Kenton County, Kentucky, this 12 day of April, 1978.

/s/D. J. GOODENOUGH,
JUDGE

[Certification Omitted]

EXHIBIT O

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al,

Defendants.

AFFIDAVIT

(Filed July 20, 1978)

Comes now Richard S. Nelson, attorney for the plaintiff herein, and being first duly cautioned and sworn, states as follows:

1. The Writ and Order of Possession issued in this matter pursuant to Order of the Court dated July 6, 1978 was not immediately signed by the Judge of the Kenton Circuit Court at the specific request of counsel for the plaintiff. The reason for this was to allow the Kenton County Sheriff to make necessary arrangements to execute the Writ and Order of Possession and since the Sheriff is under a ten (10) day deadline by statutes, counsel desired not to obtain the signature of the Judge and file the Writ and Order of Possession until July 12, 1978.

2. The date of the Writ and Order of Possession as shown thereon at the bottom of April 12, 1978 is in fact

July 12, 1978 and the month of "April" was inadvertently inserted by counsel for the plaintiff.

3. The filing date in the office of the Kenton Circuit Court also was on July 12, 1978 and the Writ and Order of Possession was delivered to the Kenton County Sheriff on or about that date for execution.

The foregoing and within Affidavit is made by counsel in order to establish the true and accurate sequence of events and to correct the obvious chronological dates inaccurately and inadvertently contained in the Writ and Order of Possession at the end thereof and on it's time stamp.

/s/RICHARD S. NELSON
RICHARD S. NELSON

Attorney for Plaintiff

[Jurat Omitted]

[CERTIFICATION OMITTED]

EXHIBIT P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CASE NO: COV. CIVIL 78-05; 78-57; 78-70; 79-40

EDDIE THOMPSON, JR.,

Plaintiff,

v.

JUNE HENDRICK, et al.,
RICHARD NELSON, RICHARD SLUKICH,
PEOPLE'S LIBERTY BANK, et al.,

Defendants.

PRE-TRIAL CONFERENCE

September 10, 1980

BEFORE THE HONORABLE
WILLIAM O. BERTELSMAN,
JUDGE OF THE DISTRICT

FOR THE PLAINTIFF:

EDDIE THOMPSON, JR., PRO SE
736 Highland Avenue
Covington, Kentucky 41011

FOR THE DEFENDANTS:

RODNEY S. BRYSON, Esq.
Attorney at Law
First National Bank Building
Covington, Kentucky
(For) Richard Nelson

RICHARD NELSON, Esq.
Attorney at Law
P.O. Box 1209
Covington, Kentucky 41012

I wrote a letter on behalf of the Bank to Mr. Thompson, which he has contended is threatening and so forth.

I'd like to read the letter, because it's another notice. (Reading) "Dear Mr. and Mrs. Thompson, In view of the attitude you have displayed in the past, I really wonder why I'm even taking the time to write this letter. Perhaps, it is out compassion that you do not continue to incur additional expenses. As you know, the writ of possession issued by the Court is now a final order. . . ."

And I continued all the way through and said to him. . . . "We can proceed in the same manner again . . . ." when he was put out. . . . "And have a moving company just move you out of the house, while my clients take possession, or if you desire, you may vacate the premises now and we will enter without an intervention of the Sheriff or a moving company. The choice is yours.

"If I do not hear from you inviting within ten days of the date of this letter, indicating that you intend to voluntarily vacate the premises, in compliance with the writ of possession and that you will vacate the same within an

additional ten days, we intend to proceed without further notice, as such is not required."

That's the letter and he has attached it as an exhibit to many of his pleadings . . . .

• • •

At that point I advised my client that in view of the fact Mr. Thompson had moved back in the last time, there was every reason to believe that he would do the same thing this time.

The Bank was the owner of the property and had a right, I believed, to protect its property from unwarranted trespassing.

We hired at a rate of $5.00 per hour off-duty Covington police officers to occupy the Bank's premises, in order to avoid his moving back in. This was successful because he did not move back in. He was not arrested by those officers. They just remained in there. Some were also working, so when they would go off duty as police officers, they would come to the house and then we would pay them while they were off duty.

But at other times during the day they were actually working. They occupied the house. In fact, one, I believe had his wife and children with him for awhile. But that was the Bank's house at that time.

The Bank was contacted by Mr. Slukich, who is an attorney here in Covington, indicating he desired to purchase the Thompson residence.

I had nothing to do with the negotiations for that. Apparently, arrangements were made for Mr. Slukich to purchase it.

The Bank was to deed the property to him, and he signed a note, and a mortgage was taken upon the property. I prepared the deed as the scrivener, because it's

the obligation of the seller in Kentucky to prepare the deed to the property, and the seller was People's Liberty Bank.

I had prepared the deed. The deed was signed on July 27th, 1978.

Since the Bank also took a mortgage on the property, I took the deed and the mortgage to the Clerk's Office to insure that they were properly recorded in sequence and that they would both be mailed back to me, which is customary procedure, and to insure that they were sequentially recorded in the proper order.

Mr. Thompson mentioned about a warranty and, Judge, I do not know — the warranty — if the form warranty statement is on the original of the mortgage.

The only thing that was changed at the bottom is a pro-ration of taxes for the year 1978. Why it's not in the photocopy, I don't know.

As soon as the transfer took place, the deed was recorded. I contacted the police officers — off duty police offiicer — who were our employees protecting our home, and advised them we no longer owned the home and that they are to leave.

It's my understanding that they left. That ended the actual foreclosure proceedings all the way through. . . .

EXHIBIT Q

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY

Plaintiff,

vs.

PATRICIA THOMPSON
and EDDIE THOMPSON, JR,.

Defendants.

ORDER

(Filed April 18, 1978)

The defendants herein having filed (1) "Motion for Relief from Order Confirming the Final Report of the Master Commissioner", and (2) "Motion for Relief from Order Granting Writ of Possession", and (3) "Motion for Leave to File Copy of Appraisal Report", said motions having been filed with the Clerk of this Court on March 28, 1978 and duly served upon counsel for the plaintiff herein on the same date, said motions not having specified a hearing date, the motions came on for hearing at the next regular call of the Motion Docket of this Court on April 17, 1978 at 9:30 a.m., counsel for the plaintiff being present, no one having appeared for the defendants herein;

The Court notes that as to the various motions filed by the defendants, no affidavit was filed in support of said motions by the defendants;

The Court having reviewed the authorities cited by the defendants and being otherwise sufficiently advised;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that each of said motions of the defendants be and they are hereby overruled.

DATED at Covington, Kenton County, Kentucky, this 18 day of April, 1978.

/s/ D. J. GOODENOUGH
Judge, Kenton Circuit Court
Third Division

[CERTIFICATION OMITTED]

EXHIBIT R

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLES LIBERTY BANK & TRUST COMPANY
Plaintiff,

vs.

EDDIE THOMPSON, JR., Etc., et al.,
Defendant.

APPRAISEMENT

We, the undersigned, disinterested housekeepers of Kenton County, not related to any party to this action, having been duly appointed by WILLIAM J. DEUPREE JR., Master Commissioner of the Kenton Circuit Court, to value the hereinafter described property adjudged to be sold, do value it as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly

along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

Commonly known as 734-736 Highland Avenue, Covington, Kentucky.

The improvements thereon consist of a modern 1-Family Brick Dwelling.

The undersigned appraisers were unable to gain entrance into this property and this appraisal is a result of an outside inspection.

After giving careful consideration to all information, it is our opinion, to the best of our knowledge and belief, that the value of the property herein described is $16,000.00 as of June 2, 1977.

/s/ W. JOSEPH KENNEDY

/s/ WILLIAM C. BEUTTEL

Subscribed and sworn to before me by W. Joseph Kennedy and Wm. C. Beuttel this 2nd day of June, 1977.

/s/ WILLIAM J. DEUPREE, JR.
Master Commissioner

EXHIBIT S

OPINION RENDERED: May 2, 1980

Not to be published

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Appellants,

vs.

PEOPLES LIBERTY BANK

Appellee.

Appeal From Kenton Circuit Court
Honorable William R. Dunn, Judge
Action No. 33430

AFFIRMING

---

* * *

BEFORE: HAYES, Chief Judge, BREETZ and WILHOIT, Judges.

HAYES, CHIEF JUDGE. Eddie Thompson, Jr. and Patricia Thompson appeal from an order and judgment of the Kenton Circuit Court dismissing a forcible detainer proceeding and the appeal therefrom. The Peoples Liberty

Bank and Trust Company of Covington, Kentucky, filed the complaint for forcible detainer in Kenton Quarterly Court in September, 1977. The quarterly court rendered judgment for the bank on September 26, 1977 and ordered that a writ of restitution issue. The writ of restitution was never executed. The Thompsons appealed the quarterly court judgment to Kenton Circuit Court on September 28, 1977. No action was taken by either party to the proceeding until March 5, 1979 when the bank moved to dismiss the case as being moot on the grounds that the bank had obtained the property pursuant to another Kenton Circuit Court action and had conveyed same in July, 1978. The Thompsons filed a motion for a trial date on March 9, 1979. On March 13, 1979 the circuit court entered a judgment dismissing the case with prejudice as being moot. From this judgment the Thompsons appeal.

The Thompsons have proceeded pro se in these proceedings and apparently in the several actions in the various Kenton courts, obviously a substantial contributing factor to the Thompsons' confusion and lack of understanding concerning this proceeding. Apparently the Thompsons no longer have the property in question and ask this court to order the circuit court to put them in possession of such property. However, the simple fact is, that the property was not taken from them as a result of this case, but such was accomplished in a separate circuit court action. The Thompsons are attempting to attack a judgment over which this court has no jurisdiction. The circuit court ordered the action dismissed explaining to the Thompsons in a hearing that that was the most relief which it could grant, i.e. the bank's forcible detainer proceeding would be dismissed with prejudice. Since the Thompsons had not been relieved of their property as a result of the forcible detainer proceeding but rather had been so relieved as a result of

a circuit court proceeding, the dismissal of the forcible detainer proceeding could not result in the Thompsons being placed in possession of the property in question. The circuit court was not in error in dismissing the proceedings with prejudice. It is the bank not the Thompsons, as they perceive, who are prejudiced with respect to the proceedings.

Since we have no jurisdiction over federal courts, we will not comment on the issue raised pertaining thereto.

The judgment is affirmed.

ALL CONCUR.

ATTORNEYS FOR APPELLANTS:
Patricia Thompson
Eddie Thompson, Jr., Pro Se
736 Highland Avenue
Covington, Kentucky 41011

ATTORNEY FOR APPELLEE:
Richard Nelson
11 West 6th Street
Covington, Kentucky 41011

EXHIBIT T

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 79-CA-1456-MR

PJATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Appelants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

Appeal From Kenton Circuit Court
Action No. 33430

• • •

ORDER

---

(1) DENYING MOTION TO DISMISS

(2) DENYING MOTION TO FILE LATE RESPONSE AS MOOT

BEFORE: HOWERTON, REYNOLDS, AND WHITE, JUDGES.

The appellee has moved to dismiss the above-styled appeal upon the ground that the appeal is frivolous. It appearing to the Court that a disposition of the motion

requires a consideration of the merits of the appeal, the motion to dismiss is DENIED. Inasmuch as the motion to dismiss has been denied, the appellants' motion for leave to file a late response to the motion to dismiss is DENIED as being moot.

ENTERED: January 18, 1980

/s/ J. W. HOWERTON
Judge, Court of Appeals

EXHIBIT U

COMMONWEALTH OF KENTUCKY
16th Judicial District

KENTON CIRCUIT COURT
First Division

INDICTMENT No. 17932

COMMONWEALTH OF KENTUCKY

vs.

EDDIE THOMPSON

THE GRAND JURY OF KENTON COUNTY CHARGES:

Eddie Thompson

WITH COMMISSION OF THE OFFENSE OF THEFT BY DECEPTION

on the 14th day of April, 1976, in Kenton County, Ken-

tucky, by obtaining $150 from another person by creating the false impression that he was selling to the other person, Heroin, a Schedule I, Narcotic, controlled substance, when, in fact, said substance was not Heroin,

A Class D Felony, in violation of K.R.S. 514.040 (1) (a) and against the peace and dignity of the Commonwealth of Kentucky.

A TRUE BILL

/s/ MALVIN L. COBB
Foreman

I, Frank Trusty, II, Commonwealth's Attorney, 16th Judicial District, do hereby certify that a copy of the foregoing indictment was personally handed to the defendant (s) by me on .....

/s/ FRANK TRUSTY, II
Commonwealth's Attorney
16th Judicial District

Witnesses:

Jim Mercer

EXHIBIT V

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

ORDER OF DISTRIBUTION

(Filed June 27, 1977)

It now appearing to the Court that the Report of Sale herein has been confirmed, that the purchaser has paid the total purchase price plus interest and it now being necessary to disburse that money and the Court being otherwise sufficiently advised:

IT IS NOW THEREFORE ORDERED AND ADJUDGED that the Master Commissioner shall pay from said sum paid by the purchaser the court costs incurred herein in the amount of $661.58; he shall then pay to the City of Covington, Kentucky the sum of $484.39 in payment of delinquent real estate taxes, penalty and interest; he shall then pay to A. T. Wood, Clerk, in the sum of

$91.81 in payment of delinquent 1975 taxes, including penalty and interest; he shall then pay the sum of $7,309.62 to The Peoples Liberty Bank and Trust Company in full payment of its judgment against the real estate situated on Highland Avenue in Covington, Kentucky as rendered in this case.

IT IS FURTHER ORDERED that the balance remaining in the sum of $5,952.60 shall be paid unto Eddie Thompson, Jr. and Patricia Ann Thompson, husband and wife. The aforesaid payments will consume all of the money in the presence of the Master Commissioner in this case.

/s/ D. J. GOODENOUGH
Judge, Kenton Circuit Court

EXHIBIT W

AOC-79-060
Rev. 9-79
Commonwealth of Kentucky
Court of Justice

KENTON COUNTY CIRCUIT COURT

No. 31053

THE PEOPLES LIBERTY BANK & TRUST CO.

vs.

EDDIE THOMPSON, JR., ET. AL.

CERTIFICATION OF COURT RECORDS

I, Ed Schroeder, Clerk of the Circuit Court, do certify that the following are true and correct copy (s) of the CERTIFICATION OF A CERTIFICATION OF COURT RECORDS as recorded in the Office of the Circuit Clerk of Kenton County.

IN TESTIMONY WHEREOF witness my hand as Clerk aforesaid, this the 21st day of September, 1982.

ED SCHROEDER
Clerk

BY: M. PARTIN D.C.

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF KENTON)

I, Ed F. Schroeder, Clerk of the Kenton Circuit Court, certify that the foregoing Fifty-nine (59) pages contains a full, entire and complete Transcript of the Supplemental Record had in my said court in the case of The Peoples Liberty Bank and Trust Co. vs. Eddie Thompson, Jr. et al, as the same is of record and on file in my said office..

Witness my hand as Clerk of said Court this 7th day of January, 1982.

ED F. SCHROEDER, CLERK
BY: /s/ E. SETTLE,, D.C.

EXHIBIT K

MONTHLY LEASE

Covington, Kenton County, Kentucky July 19, 1978

We have this day rented by the month from The Peoples Liberty Bank and Trust Company the house located at 736 Highland Avenue, Covington, Kentucky for which we agree to pay $200.00 per month, IN ADVANCE, on the fifth day of each and every month. Upon non-payment of Rent within THREE DAYS after it shall become due, the said The Peoples Liberty Bank and Trust Company shall have the right to re-enter and take possession of said premises without demand of rent or notice of possession.

We will not use said premises for any unlawful purpose or use said premises in violation of any laws relating to intoxicating liquors. Not responsible for accidents on premises.

/s/ BERNARD SMITH
Lessee

/s/ JAMES LILES
Lessee

The Peoples Liberty Bank and
Trust Company

/s/ R. V. HAILE, JR., PRESIDENT
Lessor

Office - Supreme Court, U.S.
FILED
JAN 17 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-835

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant.

vs.

PEOPLES LIBERTY BANK

Respondent-Appellee-Plaintiff.

MOTION TO DISMISS OR AFFIRM

RICHARD S. NELSON, ESQ.

Attorney for Respondent/
Appellee/Plaintiff

11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41012
(606) 291-1511

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTION PRESENTED FOR REVIEW

1. Whether the Trial Judge erred in his refusal four years after Entry of same to set aside a mortgage foreclosure Sale, Order Confirming Sale, Deeds executed pursuant thereto, and two Writs of Possession thereafter, and if so, does this constitute a violation of any Constitutionally protected right of the Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

No. 82-835

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant,

vs.

PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Respondent-Appellees-Plaintiffs.

RESPONDENTS REPLY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CONSTITUTIONAL

and

STATUTORY AUTHORITIES

KENTUCKY REVISED STATUTES

K.R.S. 426.571 – When commissioner may convey real property – Death of party after sale – (1) real property may be conveyed by a commissioner appointed by the court:

(a) If by the judgment in an action a party be ordered to convey such property to another.

(b) If such property have been sold under a Judgment or order of the Court and the Sale confirmed.

(2) The death of a party, after a sale, does not prevent a conveyance. It shall be made, and shall have the same effect, as if he were living.

K.R.S. 426.572 – Requisites of commissioner's deed – The Deed of the Commissioner shall refer to the judgment orders and proceedings authorzing the conveyance, so that the same may be readily found.

K.R.S. 426.573 – Title passed by deed made pursuant to judgment – A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

K.R.S. 426.574 – Title passed by deed made pursuant to order of sale – A conveyance made in pursuance of a sale ordered by the Court shall pass to the grantee the title of all the parties to the action or proceeding.

K.R.S. 426.005 – Personal Judgment in action to enforce mortgage or lien – When mortgage may be enforced – (1) in an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally. (2) In an action to enforce a mortgage or other lien a sale of the property may be ordered without giving time to pay money or do other act.

K.R.S. 426.260 – Motion for Possession by purchaser; notice; judgment (1) The purchaser of land sold under execution and not redeemed after obtaining a conveyance therefor may, upon ten days' notice in writing to the defendant in the execution, whose lands have been sold, enter a motion on the docket in the circuit court of the county where the land is situated for a judgment for the possession of the land. If upon the hearing of the motion, the court is of the opinion that the purchaser is entitled to the possession, it shall render a judgment accordingly and award possession, with costs. The proceedings on the motion shall be provided in K.R.S. 418.005 to 418.015, and Rule 6.03 of the Rules of Civil Procedure.

(2) The notice referred to in subsection (1) of this section shall be in substance as follows:

"A,B to C,D notice:

"You are hereby notified that I, will on the ..... day of ....., 19...., enter a motion on the Docket of the ..... Circuit Court for a judgment for the possession of certain lands situated in ..... County, Kentucky which lands are described as follows: (DESCRIPTION), being the same lands bought by me at a sale duly held under execution which issued from the office of the Clerk of the ..... Court in favor of ..... Plaintiff vs. ....., Defendant. (See Execution Book ....., Execution No. .....). A B."

SUPREME COURT RULES

Supreme Court Rule 34 (6)

Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

Supreme Court Rule 17

1. A review on Writ on Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following while *neither controlling nor fully measuring the Court's discretion,* indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from

the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of petitions for Writs of Certiorari to review judgments of the Courts of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on Writs of Certiorari.

KENTUCKY RULES OF CIVIL PROCEDURE

KY. RULE OF CIVIL PROCEDURE 59.05

MOTION TO ALTER, AMEND, OR VACATE A JUDGMENT

A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than ten days after entry of the final judgment.

KY. RULE OF CIVIL PROCEDURE 60.02

MISTAKE,: INADVERTANCE: EXCUSABLE NEGLECT: NEWLY DISCOVERED EVIDENCE: FRAUD, etc.

On motion, a court may upon such terms as are just, relieve a party of his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertance, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no langer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds, (a), (b), and (c) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule does not affect the finality of the judgment or suspend its operation.

COUNTERSTATEMENT OF CASE

In light of the deluge of mis-statements of facts in Petitioner's Statement of the Case, Respondent must clarify the actual facts.

In August, 1976 Appellee filed a suit against Appellants upon their mortgage Promissory Notes and asked for foreclosure and sale of certain property mortgaged by Appellants to Appellee incident to the Promissory Note and the proceeds of such apply to satisfy any judgment rendered against them in the foreclosure action. App. pp. 1a-5a.

The case was referred to the Master Commissioner of the Kenton Circuit Court who took proof under oath in an evidentiary hearing on March of 1977. App. pp. 6a-10a.

Appellants filed objections to the Master Commissioner's Report, the Kenton Circuit Court overruled those objections, confirmed the report on March 18, 1977 and entered its Judgment and Order of Sale on April 21, 1977. App. pp. 11a-16a.

On June 21, 1977, the Order of Sale was carried out, the Master Commissioner filed his report of sale (App. pp. 17a-19a) and moved to confirm same. The sale was confirmed on June 27th and final report of the Master Commissioner was confirmed on July 18, 1977. Appellee being the highest bidder at the sale, a Deed was issued by the Master Commissioner with Court approval vesting title in the real estate in the name of the Appellee.

No Appeal was taken from that final report nor from the Judgment and Order of Sale entered April 21, 1977.

In September of 1977 Appellee moved for a Writ of Possession pursuant to K.R.S. 426.260 (App. pp. 20a-23a)

and such Writ was issued October 19, 1977. Appellants appealed the issuance of such Writ. On February 7, 1978, the Kentucky Court of Appeals granted Appellee's Motion to Dismiss the Appeal (App. p. 24a) and on March 30, 1978 denied Appellant's Motion to Reconsider. (App. p. 25a)

With total inadherance to procedural rules, while their Motion for the Court of Appeals to reconsider its dismissal was pending, on March 8, 1978, Appellants filed a Motion in the Kenton Circuit Court under C.R. 60.02 to vacate and set aside the Order confirming the Master Commissioner's final report and the Writ of Possession "on the grounds that the foreclosures were procured by fraud and discrimination . . . and the Writ of Possessions were defective and wrongfully issued . . . ." (App. pp. 26a-30a) These motions were overruled by the Kenton Circuit Court on March 21, 1978. On March 28, 1978 Appellants filed a Motion to "Alter and Amend Judgment" and a Motion for the Kenton Circuit Judge to disqualify himself, same being overruled, appealed and finally dismissed on January 14, 1978.

Appellee again moved for a Writ of Possession as Appellants had moved back into the property now owned by Appellee. (App. pp. 31a-32a)

On July 12, 1978 the Writ and Order of Possession were issued by the Kenton Circuit Court and executed on July 19, 1978 by the Kenton County Sheriff. (App. pp. 33a-36a)

On May 1, 1981, over four years after the non-appealed Judgment and Order of Sale and deed to Appellee and almost three years after the second Writ of Possession was executed by the Kenton County Sheriff, Appellants filed Motions in the Kenton Circuit Court to set aside the mortgage foreclosure sale, the Order confirming that sale, to cancel the deeds made pursuant thereto, and to set aside

the Writs of Possession. Their motions were overruled and the present Appeal taken. (App. pp. 37a-38a)

ARGUMENT

Respondent finds the temptation to respond to the misstatements and allegations in Petitioner's Brief nearly over-whelming.

However, in lieu thereof, Respondent believes it is more appropriate and in the interest of justice to address the actual issue before this Court, something Petitioners have chosen to avoid. The issue is simply whether the Trial Judge erred four years later in overruling Petitioners' motion to set aside various orders pertaining to a foreclosure action thereby violating any constitutional rights of Petitioners.

First, the Respondent must assert that Petitioners have subjected all parties hereto to a frivilous Appeal by saturating their Petition with "burdensome, irrelevant, immaterial, and scandalous matter in a blatant attempt to cloud the very clear issue before this Court.

This has been the very nature of Petitioners' appellate process. They simply reiterate the same falsehoods and naked, unsupported allegations in every brief they have filed regardless of the pertinent issues.

The Court of Appeals of Kentucky clearly recognized this in its opinion wherein it was stated:

> "Although we recognize the extent to which the Appellants must have labored in an attempt to present their case to this Court, the unfortunate result is that the Brief is devoid of anything of Legal Relevance." (Petitioners App. p. 9a)

It is therefore asserted that Petitioners' Brief should be disregarded and stricken by the Court. Sup. Ct. Rule 34 (6).

In the actual issue at hand, in capsule form, the Trial Judge's position was clear. That Court was faced with a Motion to Vacate and/or Amend or Alter various Orders arising out of a foreclosure on Petitioner's home, a foreclosure based on a flagrant arrearage on Petitioners' part, (an arrearage found by the Trial Court of absolutely no payments on principal from January 1, 1974 to March 10, 1977) (App. p. 14a) and properly prosecuted pursuant to Kentucky Law. KRS 426.571; KRS 426.005; KRS 426.573; KRS 426.574; *Pemberton* v. *Harden,* Ky., 80 S.W.2d 589 (1935).

Adding to the Trial Judge's task was the fact that the Petitioners had filed this motion four years late as Kentucky Law required as unsuccessful litigant to bring his or her motion to alter, amend, or vacate a judgment not later than ten (10) days after entry of the final judgment. Ky. C.R. 59.05. The Final Judgment at issue before the Trial Court in 1981 was the Order confirming the final report of the Master Commissioner entered July 18, 1977.

Further, the Trial Judge applied Ky. C.R. 60.02 to the allegations made by Petitioners and found no new grounds to exist, no newly discovered evidence, or any other element under Ky. C.R. 60.62 pursuant to which relief could be granted. Therefore the Trial Judge was faced with the same allegations as those which this Court is now faced; allegations which have been continually ruled on by Kentucky and Federal Courts (cf. Patricia Thompson and Eddie Thompson, Jr. vs. Peoples Liberty Bank and Trust Co. # 80-1358) who found nothing to justify Plaintiff's four year delay in bring their motion or even

any merit in their arguments. He clearly did not abuse his discretion in overruling those motions.

Whether the Trial Judge's Order overruling Plaintiff's motions is an act which may be seen as a potential violation of any protected constitutional right of the Plaintiffs is another element of the issue at Bar which Petitioners seem to ignore.

Under the Rules of this Court, there are guidelines which are designed to aid the Court in using its discretion in reviewing writs of certiorari. Sup. Crt. Rule 17 (1) (a) is of no relevance, dealing solely with petitioners from Federal Courts.

Sup. Crt. Rule 17 (b) and (c) are further unfulfilled by the Petition at Bar as there has been no federal question ruled on by any state court below. Indeed, the Order of the Trial Court at issue herein was one of pure procedure and violated no rights of the Petitioners, Federal or otherwise.

It is clear that the Petition at Bar raises no Federal question and is serving merely as a vehicle for yet more of Petitioner's slanderous and unsupported allegations against the Respondent herein.

CONCLUSION

It is clear that the Trial Judge did not err in overruling Petitioners motions to amend, alter or vacate, and that this Order violated no constitutional right of the Plaintiffs, thereby raising no federal question for review. The within matter should be dismissed and the Petitioners Appeal be denied.

Respectfully submitted,

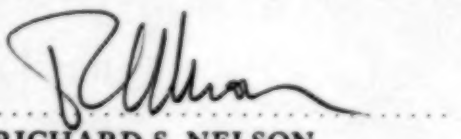
RICHARD S. NELSON

Attorney for Respondent/
Appellee/Plaintiff

11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41012
(606) 291-1511

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Motion to Dismiss or Affirm and Appendix have been served by the United States Mail upon the following: Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011; and Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011, on this the 14th day of January, 1983.



RICHARD S. NELSON

Attorney for Respondent/ Appellee Plaintiff

APPENDIX

KENTON CIRCUIT COURT
DIVISION NO. THIRD DIV.

No. 31053

THE PEOPLES LIBERTY BANK AND TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR.,
736 Highland Avenue, Covington, Kentucky,

and

PATRICIA ANN THOMPSON,
736 Highland Avenue, Covington, Kentucky,

Defendants.

COMPLAINT

[Filed August 27, 1976]

Comes now the plaintiff and for its causes of action, states as follows:

COUNT I

1. Plaintiff is a Kentucky banking corporation authorized to bring suit in it's corporate capacity.

2. On September 13, 1974, defendants executed and delivered unto the plaintiff their promissory note in the sum of $21,000.00 plus interest thereon at 9½% per annum payable in monthly installments of $220.00 commencing October 10, 1974 until paid. Said note was executed for good and valuable considerations and a copy of same is attached hereto and incorporated by reference herein.

3. Simultaneous with the execution of said promissory note, defendants executed and delivered unto the plaintiff a mortgage as surety for said promissory note upon the following described real estate situate in the City of Covington, Kenton County, Kentucky and more particularly as follows:

> Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

Said mortgage duly recorded in the Kenton County Clerk's records at Covington, Kentucky in Mortgage Book 766 at Page 46-49 and represents a first lien upon said real estate. A copy of said mortgage is attached hereto and incorporated by reference.

4. Plaintiff further states that defendants have failed to make any payments whatsoever upon principal pursuant to said promissory note, have made no payments of interest since May 12, 1975 and their remains presently due and

payable the sum of $19,478.38 plus interest thereon at 9½% per annum from May 10, 1975 until paid plus attorney fees as set forth in said promissory note.

5. Said real estate is a city lot and cannot be divided or partitioned without materially affecting it's value.

COUNT II

6. Plaintiff reiterates and reaffirms all of the allegations contained in the first and last paragraphs of Count I hereof.

7. On February 25, 1972, defendants executed and delivered, for good and valuable considerations, their promissory note unto the plaintiff in the sum of $9,000.00 payable at 7% per annum monthly with the first payment being due and payable in the month of March 1972. A copy of said promissory note is attached hereto and incorporated by reference herein.

8. Simultaneous with the execution of said promissory note, defendants further executed and delivered unto the plaintiff a first mortgage upon the following described real estate situate in the City of Covington, Kenton County, Kentucky as surety for said promissory note:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width

the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

9. Said mortgage is commonly known as an "open end" mortgage and pursuant to said open end provision, defendants further borrowed from the plaintiff an additional sum of $1,400.00.

10. As to the obligation of $9,000.00, defendants have failed to make any payments thereon toward principal since January 2, 1974, they have failed to pay any interest since June 30, 1976 and these is presently due and owing the sum of $6,836.38 plus interest at 7% per annum from June 30, 1976 until paid.

11. Pursuant to the open end provisions previously mentioned, the last payment made thereon was on August 9, 1976, the last payment immediately prior thereto was May 17, 1976 and there is presently due and owing thereupon the sum of $1,300.00 plus interest upon said sum at the rate of 8½% per annum from July 1, 1976 until paid, said open end provisions having a different interest rate than that contained in the original note.

WHEREFORE, plaintiff prays the Court as follows:

1. Pursuant to Count I hereof, for judgment against the defendants, jointly and severally, in the sum of $19,478.38, plus interest at 9½% per annum from May 10, 1975 until paid, for attorney fees, and for it's court costs herein expended.

2. Pursuant to Count II hereof, for judgment against the defendants, jointly and severally, in the sum of $6,836.39, plus interest at 7% per annum from June 30, 1976 until paid, for judgment on the sum of $1,300.00, plus interest therein at 8½% per annum from July 1, 1976 until paid and for it's court costs herein expended.

3. That the plaintiff be adjudged to have a first and superior lien upon the real estate of the defendants as herein described and that the real estate here involved be sold by the Master Commissioner of this Court in order to satisfy the judgments rendered herein against the defendants.

4. For all other proper relief.

RICHARD S. NELSON
Attorney for the Plaintiff

11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK AND TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., ETC., ET. AL.,

Defendants.

REPORT OF THE MASTER COMMISSIONER

[Filed April 5, 1977]

This case was referred to the Master Commissioner for hearing which was held on Thursday, March 10th, 1977, at 10:00 A.M. At that time the plaintiff was present represented by its attorney, Jonathan A. Mason, Esq., and the defendants were present representing themselves. From the testimony taken at that hearing, the pleadings and exhibits filed in this case, the Master makes the following report.

1. The defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

> Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to the Peoples Liberty Bank their promissory note in the amount of $21,000.00, bearing interest at the rate of 9-1/2 per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is $19,478.38, together with interest thereon at the rate of 9-1/2 per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line or the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of $9,000.00 with interest at 7 per-cent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30th, 1976. The balance that is due now is $6,836.39 with interest thereon at the rate of 7 per-cent

per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

7. The evidence adduced at the hearing indicates that the additional sums claimed due in paragraphs nine and eleven of plaintiff's complaint have previously been satisfied in full and are no longer owed by the defendants.

8. At the trial of this case, the defendant, Eddie Thompson, Jr., was permitted to testify in narrative form and was granted free lattitude to tell his entire story about these transactions. From that testimony it appears to the Master that he and the plaintiff had certain misunderstandings in their dealings and while some confusion may have been added to the negotiations in this case, none of the defendant's testimony constitutes a legal defense to the plaintiff's claim, and the Master must conclude that the defendants have failed to establish the allegations contained in their pleadings by a preponderance of the evidence.

9. This case now stands ready to be submitted for a judgment and Order of Sale.

RECOMMENDATION

The Master recommends that a judgment be entered in this case in conformity with his report as set out above, that among other things, the two parcels of property de-

scribed herein be sold as a whole and the proceeds will be distributed as set out in this report.

Respectfully submitted,

/s/ WILLIAM J. DEUPREE, JR.
Master Commissioner

Copies to:

Jonathan A. Mason, Esq.
E. J. Thompson, Jr. and Patricia Ann Thompson

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,
Plaintiff,

vs.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR. and
PATRICIA ANN THOMPSON,
Defendants.

JUDGMENT AND ORDER OF SALE

(Filed April 21, 1977)

This cause having been referred to the Master Commissioner of this Court for hearing, testimony having been taken at the hearing held on March 10, 1977, the parties being present, thereafter the Master Commissioner filed his Report with this Court; the Master Commissioner having filed Motion requesting confirmation of this Report, the defendants having filed objections to the Report of the Master Commissioner, and the Court having reviewed the Report of the Master Commissioner and the objections thereto of the defendants, and thereafter adopting the Report of the Master Commissioner;

NOW, THEREFORE, the Court finds as follows:

1. The defendants, Eddie Thompson, Jr., a/k/a E. J.

Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

> Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the West side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to The Peoples Liberty Bank their promissory note in the amount of $21,000.00, bearing interest at the rate of 9½ per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is $19,478.38, together with interest thereon at the rate of 9½ per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.
>
> Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of $9,000.00 with interest at 7 percent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided

for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30, 1976. The balance that is due now is $6,836.39 with interest thereon at the rate of 7 per-cent per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided with out materially impairing its value and if sold, it must be sold as a whole.

Based upon the foregoing Findings,

IT IS NOW, THEREFORE, ORDERED AND ADJUDGED that the plaintiff, The Peoples Liberty Bank and Trust Company of Covington, Kentucky, recover of the defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, jointly and severally, pursuant to the promissory note dated September 13, 1974, the sum of $19,478.38, together with interest thereon at the rate of 9½ per-cent per annum from September 16, 1975 until April 18, 1977 and thereafter at the rate of 8 per-cent per annum until paid, and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that said plaintiff recover of said defendants, jointly and severally, pursuant to the promissory note dated February 25, 1972, the sum of $6,836.39, plus interest thereon at

7 per-cent per annum from June 30, 1976 until paid and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate described herein is indivisible and cannot be divided without materially impairing its value and should be sold as a whole.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate be sold subject to any unpaid ad valorem taxes for the year 1977 and any delinquent taxes.

IT IS FURTHER ORDERED AND ADJUDGED that the Judgment of the plaintiff be considered a first and superior lien upon the real estate herein described and inferior only to the costs of this action.

IT IS FURTHER ORDERED AND ADJUDGED that the Master Commissioner of this Court sell at public sale on a day to be fixed by him, the real estate described herein at the door of the Courthouse in the City of Covington, Kentucky, after advertising the time, place and terms of said sale, by written notices posted, one at the door of the Courthouse, one in the vicinity of the real estate and two in public places in the City of Covington, Kentucky, for fifteen days next preceding the day of sale, after advertising, also by publication in a newspaper of general circulation for three (3) times. Said publication to be once a week for three (3) successive weeks, so made that the final publication will appear not later than two days before the day upon which the sale will occur, in compliance with K.R.S. 424. Said notice and publication will set out the description of said real estate. The sale shall be made to the highest and best bidder or bidders and shall be on a credit of four, eight and twelve months from day of sale.

For the purchase price, the Master Commissioner will take from the purchaser or purchasers, bonds in three (3) equal installments with good and sufficient surety or sureties, bearing interest from date of sale and payable to himself as Master Commissioner and at the time of the sale, the Master will require each purchaser to deposit $25.00 with said Master to be applied to any expense occasioned by any default of said purchaser.

The Master will report.

D. J. GOODENOUGH
JUDGE, KENTON CIRCUIT COURT

[CERTIFICATION OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLES LIBERTY BANK & TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ETC., ET AL.,

Defendant.

MASTER COMMISSIONER'S REPORT OF SALE

Pursuant to the judgment and order of sale entered herein May 27th, 1977 the Master Commissioner advertised the time, terms and place of sale of the real estate hereinafter described by written notices posted, one at the Court House door, one in the immediate vicinity of the property ordered to be sold, and two at other public places in the City of Covington for fifteen days next preceeding the day of sale and further by publication in the Kentucky Post, the official newspaper of Covington, Kentucky, for three weeks next preceding the day of sale; and, after having had the said property appraised under oath by W. Joseph Kennedy and William C. Beuttel, two disinterested, intelligent housekeepers of said county, not related to any party to this action, whose appraisement is in writing and filed herewith, the Master did on the 21st day of June, 1977, expose at public vendue, at the Court House door in said city, on the terms decreed, said prop-

erty described in said judgment notices and publications, to wit:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the dividing line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.
>
> Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of $14,500.00, and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of $14,500.00. The property was appraised for $16,000.00. The purchasers paid cash.

> Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Rob-

bins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of $5,500.00 and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of $5,500.00. The plaintiff's purchaser has heretofor recovered a judgment in this case in excess of its bid and will apply to the Court for the proper orders granting it a credit. With this in mind, they paid to the Master Commissioner only the Court costs incurred herein. The property was appraised for $7,000.00.

Respectfully submitted,

WILLIAM J. DEUPREE, JR.
Master Commissioner

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

Comes now the plaintiff, through counsel, and pursuant to KRS 426.260 moves for an Order or Writ of Possession of the two (2) parcels of real estate involved in these proceedings and gives notice as follows to the defendants: TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned will, as attorney for the plaintiff herein, on the 17 day of October, 1977, ask that the within Court give a Judgment and Writ for the plaintiff to be placed in possession of the two (2) parcels of real estate involved in this action, being commonly known as 736 Highland Avenue, Covington, Kentucky and the northwest corner of Greenup and Robbins Streets, Covington, Kentucky.

RICHARD S. NELSON
Attorney for Plaintiff

P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on ....., the 17 day of October, 1977 at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

WRIT AND ORDER OF POSSESSION

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within ten (10) days verifying compliance with this Order:

> Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:
>
> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and

Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

Commonly known as the northwest corner of Greenup and Robbins Streets, Covington, Kenton County, Kentucky and being more particularly described as follows:

Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

DATED at Covington, Kenton County, Kentucky, this 19 day of October, 1977.

D. J. GOODENOUGH
JUDGE

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
Nos. 31053 and 33430

ORDER GRANTING MOTION TO DISMISS APPEAL

BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and REYNOLDS, JUDGES.

The Court, having considered the motion to dismiss the appeal, and having further considered the response thereto, and being of the opinion that as the notice of appeal was not filed within twenty days of the date of the order confirming the final report of the Master Commissioner, this appeal should be, and hereby is, DISMISSED.

ENTERED: February 7, 1978.

JUDGE, COURT OF APPEALS

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

PEOPLE'S LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT

ORDER DENYING MOTION TO RECONSIDER

BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and REYNOLDS, JUDGES.

The Court, having considered the motion for rehearing which is treated as a motion to reconsider, and being otherwise sufficiently advised, ORDERS that the motion be and is hereby DENIED. The Clerk of this Court is hereby ORDERED to return the file to the Kenton Circuit Court forthwith.

ENTERED: March 30, 1978.

JUDGE, COURT OF APPEALS

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLE'S LIBERTY BANK AND TRUST CO.
Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Defendants.

MOTION
(1) FOR RELIEF FROM ORDER CONFIRMING THE FINAL REPORT OF THE MASTER COMMISSIONER, AND
(2) FROM ORDER GRANTING WRIT OF POSSESSION
(3) FOR LEAVE TO FILE COPY OF APPRAISAL REPORT

Pursuant to Cr. 60.02, defendants herein move the court to vacate and set aside the order confirming the final report of the Master Commissioner entered against defendants in this cause on July 18, 1977, and the order granting plaintiff a Writ of Possession on October 19, 1977, on grounds that the foreclosures were procured by fraud and discrimination; and the Writ of Possession was defective and wrongfully issued as more fully appears from the appraisal of 736 Highland Avenue and the record.

There can be no valid sale without a valid appraisement. *K.R.S. 426.200 (3) Adams* v. *Napier 334 S.W. 2d 915.*

Defendants further move the court for an order granting leave to file copy of appraisal of 736 Highland. (Exhibit A) Mr. Grayson, Sr. had this appraisal made for People's Liberty Bank sometime in the summer of 1975. Mr. Grayson, Sr. refused to give defendant's a copy of the appraisal made of 1013-15 Greenup Street.

The purported Writ of Possession issued on October 19, 1977 is void as the court entered its final order on July 18, 1977. "A trial court loses jurisdiction over its judgment 10 days after the signing and entry thereof, unless a motion is filed under CR 59.02. A judgment entered after expiration of such 10-day limit is void, an appeal therefrom must be dismissed, leaving the first judgment in effect." *Yocum* v. *Oney 532 S.W. 2d 15.*

Where an illegal or wrongful sale of property is made under a power of sale contained in a mortgage or deed of trust, mortgagee or trust deed mortgagee will be held liable to mortgagor for damages sustained. *Owens* v. *Grimes 539 S.W. 2d 387.*

PATRICIA THOMPSON, Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

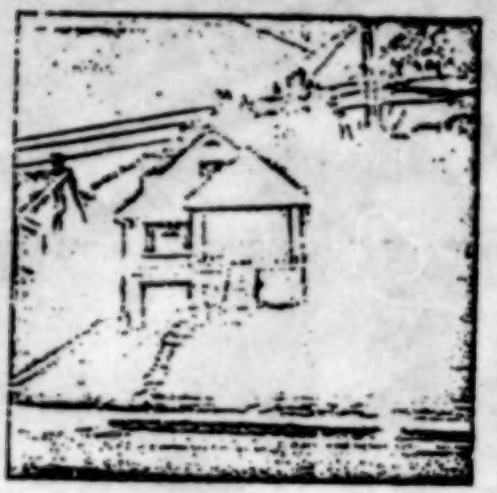
CERTIFICATION

I certify that a copy of the foregoing Motion has been served by the United States mail upon:

Mr. Richard Nelson, attorney for plaintiff, and The Court of Appeals this 8 day of March, 1978.

PATRICIA THOMPSON, Pro Se

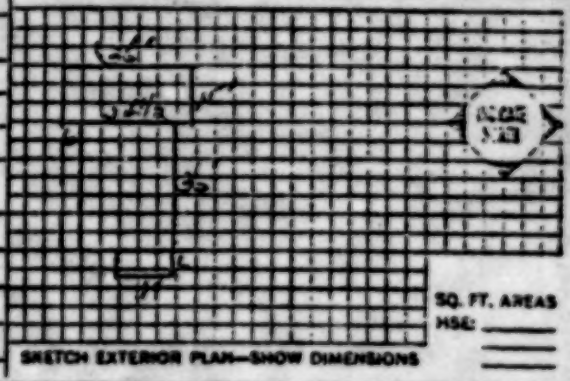
...FESSIONAL RESIDENTIAL ...SAL



Ins. Value 100%: Loan Number:
Ins. Value "As Dev.": Loan Reported:
No. of dwelling units: $ 26,600
Masonry ... or Frame: Final Estimate of Market Value

ADDRESS: 736 Highland Avenue
CITY/COUNTY: Covington BLK. LOT
SUBDIVISION:

trust



SQ. FT. AREAS
HSE:

SKETCH EXTERIOR PLAN—SHOW DIMENSIONS

N E I G H B O R H O O D D A T A

PROXIMITY OF PROPERTY TO:	Less ½ mi.	½ to 1 mi.	1 mi. +	Trans. to	TRENDS:	INC.	DEC.	STAB.
Downtown Area			X	X	Income Level	X		
Local Shopping		X		X	Population			X
Grammar School		X		X	Housing Units			X
High School			X	X	Density Pop./Unit	X		
Expressway Access			X		Ave. Prop. Values	X		
Other:					Ethnic Composn.	changing		
					Remaining Economic Life			yrs.

TYPE OF DEVELOPMENT: One Few Many Builders. UNITS PER YR.

GENERAL ECONOMICS:
TYPICAL RESIDENT'S GROSS INC. $10,000 $/yr.
TYPICAL OCCUPATION White & Blue Collar

TYPICAL PROPERTY VALUES:	DOLLARS/000 LOW	HIGH	MODE	% DEM.
Single Family Residence	15,000	28000		90
2-12 Family & Condominium	20000	30000		10
Condominium & Multi-Family				
Non-Residential Uses				

TYPICAL FINANCING: CONV. X INS. Int./Yld. %

S I T E D A T A

LOT SIZE	41 x 146 x	x	x		Corner	Inside X	
ZONING	Res	HIGHEST AND BEST USE OF SITE: Present X or					
IMPROVMTS.	Asphalt St.	Conc. St. X	Curbs X	Sidewalks X	Alley	Driveway X	
UTILITIES	Gas X	Elect. X	Water X	San. Sewer X	Storm Sewer X	Well	Septic
EASEMENTS (DETRIMENTAL TO VALUE):		Party Wall	Driveway	Sidewalk	Other		

Describe Easements:

B U I L D I N G D A T A

1 Family — ACT 8 / EFF 8

EXTERIOR					Good	Avg.	Poor
FOUNDATION	Conc. X	Block	Brick			X	
	Bsmt. X	Crawl	Slab	full		X	
WALL/CONST.	Frame	Veneer X	Block	brick		X	
WINDOWS	Metal	Wood X	Type	S & S		X	
ROOFING	Asphalt X	Bit. Up	Wood			X	
SIDING	Wood	Alum.	Stucco	brick			
GAR.-CAR PT.	Frame	Veneer	Block				
# Cars	Det'd.	Att'd.	Bt.-in X	O/H Door		X	
OTHER	Gutters	Porch	Patio				

REMARKS: Family room in basement-paneled tile floor, electric door lift.

INTERIOR						Good	Avg.	Poor
WALLS & CEIL.	Drywall X	Plaster	Wood				X	
FLOOR	Conc.	Tile	Wood X	Carpet		X		
CENT. HTG.	Air	Water	Steam	SPACE			X	
FUEL	Gas	Oil	Elect. X	Coal			X	
FUR./BOIL.	Age	HWH	Gals.	A/C			X	
ELECT.	200 Amps	Fuse	Cir. Br.	G/S			X	
BATH(S)	Age -	FLR/walls	Ceramic X	Other -		X		
BATH FIX(S)	Lavs. 1	W.C.'s 1	Tub(s) 1	Shwr(s) 1			X	
KITCHEN	Age	Cb. & SI.	Adq.	Inadq.			X	
	O/R X	Dishw.	Disp.	Ex. Fan			X	
OTHER	Fwspl. X			Flr. Plan D			X	

FLOOR	ROOMS	LIVING	DINING	KITCHEN	BEDRM	CLOSETS	BATHS FULL	BATHS HALF	APTS.
BASEMENT									
1st FLOOR	4	1	X	X	2	X	1		
2nd FLOOR					2		1	3	
3rd FLOOR									
ATTIC									
TOTAL									No. Units

DEPRECIATION	IF NOT TYPICAL, DESCRIBE
PHYSICAL DETERIORATION	
FUNCTIONAL OBSOLESCENCE	
ECONOMIC OBSOLESCENCE	

29a

DEFINITION OF MARKET VALUE:* "Market value contemplates the consummation of a sale and the passing of title from seller to buyer by deed, under conditions whereby:

1. Buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical owners.
2. Both parties are well informed or well advised and act prudently, each for what he considers his own best interest.
3. A reasonable time is allowed to test the market, and
4. payment is made in cash or in accordance with financing terms available in the community for the property type at its locale."

*Society of Real Estate Appraisers

COST APPROACH TO VALUE:

LAND VALUATION—(ZONED: Res.): 41 F.F. or S.F. x 50 $/F.F. or $/S.F. = $ 2050

+ SITE IMPROVEMENTS: "AS IS" driveway, landscaping, etc. + 500

other: TOTAL $ 2,550

BUILDING VALUATION—REPLACEMENT COST

BLDG.	AREA	UNIT COST	COST NEW	AGE ACT.	AGE EFF.	DEPRECIATION PHY.	DEPRECIATION FUNC.	DEPRECIATION ECON.	DEPRECIATION TOTAL	DEP. VALUE
MAIN	882	30.00	26460	8	8	10%				23814
Patio & Porch	84									700
Garage	259									500
Basement	623									1000

(Paneled & Finished walls & tile floors) + 26,014

INDICATED VALUE from COST APPROACH $ 28,564

MARKET DATA APPROACH TO VALUE:

	A		B		C	
ADDRESS OF COMPARABLE SALES	2240 Joins Lane		7146 Dennis Road		516 Richland	
SALE PRICE OF COMPARABLE	Jan 1973 $ 30,900		Apr 1973 $ 25,000		July 1973 $ 18,150	
ADJUSTMENT FOR DATE OF SALE	$ (−)	(+)	$ (−)	(+)	$ (−)	(+) 1150
AGE & OVERALL CONDITION	2000			2500		2000
SIZE & UTILITY			500			2000
MODERN KITCHEN, BATH, HEATING			500			
GARAGE & PORCHES						500
SITE & LOCATION	1500		1000			
OTHER	800					
SUB-TOTALS	$ 4300 (−)	$ (+)	$ 2000 (−)	$ 2500 (−)	$ (−)	$ (+)
TOTALS	$ 26600		$ 25500		$ 24,800	

INDICATED VALUE from MARKET APPROACH $ 26,600

INCOME APPROACH TO VALUE: (If applicable)

No Rental Figures Available in Area

ESTIMATED MONTHLY RENTAL: $ _____ x GROSS MONTHLY MULTIPLIER (_____) =

INDICATED VALUE from INCOME APPROACH $ _____

MARKETABILITY "AS IS": Good X Average _____ Fair _____ Poor _____

REMARKS:

CORRELATED FINAL ESTIMATE OF MARKET VALUE AS OF _____, 19__ $ 26,600

I (We) certify that to the best of my (our) knowledge and belief the facts and data used herein are true and correct, and that I (we) personally inspected the property from the inside and the outside, and that I (we) have no undisclosed interest, present or prospective therein.

_____ Appraiser(s)

MARKETABILITY "AS REPAIRED": Good _____ Average X Fair _____ Poor _____

NEEDED REPAIRS: CURABLE ITEMS	EST. COST

COR. ESTIMATE OF MARKET VALUE $ _____

EST. CONTRIBUTION TO MARKET VALUE FROM REPAIRS + _____

CORRELATED ESTIMATE OF MARKET VALUE, AS REPAIRED:

Sale A (market data approach) indicates a value of $26,600. This sale was most similar in age, utility and size, and located in a close proximity. No rentals for single family dwellings were available - income approach not applicable.

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

[Filed June 14, 1978]

Comes now the plaintiff, through counsel, and moves that the Court issue an Order and Writ of Possession for the following described real estate presently occupied by the defendants:

Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision;

thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots, 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned, as attorney for the plaintiff herein, will, on the 26th day of June, 1978, ask the Third Division of the Kenton Circuit Court to grant an Order and Writ of Possession directing that the Sheriff of Kenton County place the plaintiff in possession of the above described real estate.

RICHARD S. NELSON
Attorney for Plaintiff
P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on Monday, the 26th day of June, 1978 at 3:00 p.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON

[CERTIFICATE OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ET AL.,

Defendants.

WRIT AND ORDER OF POSSESSION

[Filed July 7, 1978]

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within (10) days verifying compliance with this Order:

> Commonly known as 736 Highland Avenue, Covington, Kentucky, and being more particularly described as follows:
>
> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows; Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of

which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

DATED at Covington, Kenton County, Kentucky, this 12 day of April, 1978.

/s/ D. J. GOODENOUGH
JUDGE

A TRUE COPY: ATTEST

ED F. SCHROEDER-CLERK

BY /s/ E. NIENABER D.C.

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al,

Defendants.

AFFIDAVIT

[Filed July 12, 1978]

Comes now Richard S. Nelson, atorney for the plaintiff herein, and being first duly cautioned and sworn, states as follows:

1. The Writ and Order of Possession issued in this matter pursuant to Order of the Court dated July 6, 1978 was not immediately signed by the Judge of the Kenton Circuit Court at the specific request of counsel for the plaintiff. The reason for this was to allow the Kenton County Sheriff to make necessary arrangements to execute the Writ and Order of Possession and since the Sheriff is under a ten (10) day deadline by statutes, counsel desired not to obtain the signature of the Judge and file the Writ and Order of Possession until July 12, 1978.

2. The date of the Writ and Order of Possession as

shown thereon at the bottom of April 12, 1978 is in fact July 12, 1978 and the month of "April" was inadvertently inserted by counsel for the plaintiff.

The filing date in the Office of the Kenton Circuit Court also was July 12, 1978 and the Writ and Order of Possession was delivered to the Kenton County Sheriff on or about that date for execution.

The foregoing and within Affidavit is made by counsel in order to establish the true and accurate sequence of events and to correct the obvious chronological dates inaccurately and inadvertently contained in the Writ and Order of Possession at the end thereof and on it's time stamp.

RICHARD S. NELSON
Attorney for Plaintiff

/s/ LINDA S. TYE
NOTARY PUBLIC
State of Kentucky at Large

Subscribed and sworn to before me, a Notary Public, by Richard S. Nelson, this 19th day of July, 1978.

[CERTIFICATE OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK,

Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Defendants.

ORDER

[Filed June 17, 1981]

The instant action is before the court on defendants' Motion to Set Aside (a) Mortgage Foreclosure Sale, (b) Order Confirming Sale (c) Cancel Deeds Made Pursuant thereto; (d) Writs of Possession Entered Thereafter (signed in October 1977 and April 1978, respectively).

Defendants Patricia and Eddie Thompson, Jr. present pro se; Mr. Richard Nelson, attorney for Peoples Liberty Bank, present.

The Court having reviewed the authorities cited by defendants and otherwise being sufficiently advised:

IT IS ORDERED AND ADJUDGED that the Motion/s of Defendants is hereby denied because these matters have

been previously ruled on by the Court and denied, and the Court does not have jurisdiction of the matter.

This is the 17 day of June 1981.

JUDGE KENTON CIRCUIT COURT

/s/ D. J. GOODENOUGH
THIRD DIVISION

[CERTIFICATE OMITTED]

No. 82-835

Supreme Court, U.S.
FILED
JAN 26 1983
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants-Defendants,

v.

PEOPLES LIBERTY BANK,
Appellee-Plaintiff.

APPELLANTS BRIEF IN OPPOSITION TO DISMISS OR AFFIRM

PATRICIA THOMPSON, Pro Se
EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

I hereby certify that 3 copies of the foregoing Brief have been served by the United States mail, upon: Mr. Richard Nelson, 11 W. 6th Street, Covington, Kentucky, 41011, this _____ day of January, 1983.

PATRICIA THOMPSON, Pro Se

EDDIE THOMPSON, JR., Pro Se

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

No. 82-835

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants-Defendants,

v.

PEOPLES LIBERTY BANK,

Appellee-Plaintiff.

APPELLANTS BRIEF IN OPPOSITION TO DISMISS OR AFFIRM

While Appellants' position on the merits is adequately set forth in our (Appellants) Jurisdictional Statement, we think it desirable to reply to Appellee's assertions that the matter should be dismissed.

Appellee (Bank) does not deny: that it (Bank) hired police officers (at $5 an hour) to use force, terror, and violence to aid in the wrongful foreclosure (Appellant App. P. 20, 29); that it (Bank) refused Appellants' (Thompson's) mortgage payments (Appellant App. P. 21); that the trial court made no appraisal of Appellants (Thompsons) property before sale; that it (Bank) leased Appellants (Thompsons) home to 2 police officers in order

to gain possession on July 19, 1978 (Appellant (App. P. 20, 45); that it (Bank) also used the void writ and order (signed April 12, 1978) on July 19, 1978 to gain possession of Appellants home; that its attorney (Mr. Nelson) committed fraud on July 19, 1978 by claiming he (Nelson) had inadvertently inserted April 12, 1978 (Appellee App. P. 35, 36); or that the record has been tampered with in the case to aid Appellee (Bank).

Thus the question remains: Was the hiring of police officers and others by Appellee (Bank) to use force, terror, and violence to gain possession of the Thompsons (Appellants) real property in a mortgage foreclosure and to criminally prosecute Appellants (Thompsons) to aid in the wrongful foreclosure a violation of Appellants (Thompsons) Constitutional Rights – 4th, 5th, and 14th Amendments to the United States Constitution?

Appellee (Bank) contends that their (Bank's) employment of police officers to aid in the wrongful foreclosure is burdensome, irrelevant, immaterial and/or scandalous. However, this Court has concluded that ". . . the involvement of state officers . . . provides the state action to show a direct violation of . . . Fourteenth Amendment, equal protection right whether or not the actions were officially authorized or lawful, *Adickes* v. *Kress* & *Co.*, 398 U.S. 144, *U.S.* v. *Price*, 383 U.S. 787, *Monroe* v. *Pape*, 365 U.S. 167.

Appellee also appears concerned that it took Appellants over 4 years to prosecute their claim. It would be fair to say that, "If Appellee and police officer Jim Mercer had been able to get Appellant (Eddie) convicted on false charges brought in April 1976 (Appellants App. p. 39), or if Officer Finan and other officers hired by Appellee (Bank) had been successful on April 15, 1978, when they beat and threatened Appellant's (Eddie's) life, Appellants

(Thompsons) still may not have had an opportunity to present their claim (Appellants App. P. 20, 29).

Appellees annexed an appendix to its Motion to dismiss or affirm (Reply in opposition to petition for writ of certiorari). The Master Commissioner's Report of Sale is Appellees Appendix page 17, 18. The Master Commissioner reports that Appellants home on Highland Avenue was appraised at $16,000.00. On Appellees Appendix page 29 is an appraisal report of Appellants home which says Appellants home was appraised at $26,000.00. This appraisal was done by the "cost approach to value" and did not include 500 square feet of living space on the second floor. This appraisal report was submitted to trial court by Appellants. The last time Appellants saw the record this exhibit was not indexed, even though the Kenton Circuit Court Clerk has certified the Record at .... twice. (*See* S.Ct. R. 34.5) "Whenever, in the brief of any party, a reference is made to . . . or record, it must be accompanied by the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence and at which it was ruled on by Judge must be indicated. e.g., (PL. Ex 14; R. 199, 2134)."

If we further note the appraisal was attached to a rule 60.02 motion served on Appellee-Plaintiff on March 8, 1978 (Appellee Appendix P. 27). On April 12, 1978, Appellee had Judge Goodenough to sign a writ and order of possession (Appellee App. P. 33) without notice to Appellants.

On April 15, 1978, 3 police officers hired by the Bank beat and threatened Appellant's (Eddie) life. Appellee admits hiring at least one of the police officers and paying them $5 an hour. (Appellants Appendix P. 20, 29).

The Affidavit on Appellee Appendix P. 35 was filed on July 20, 1978, instead of July 12, 1978, as indicated. The Affidavit was filed only after Appellant inquired of the Judge about the April 12, 1978 writ and order of possession (July 19, 1978). We may note that the Affidavit was notarized on July 19, 1978. These are the kinds of misrepresentations Appellee continues to make.

The Motion and Notice on Appellee Appendix page 31 was never served on Appellants.

Appellee also makes reference to a flagrant arrearage on Appellants part, found by the trial court (Appellee Appendix P. 9).

There was no flagrant arrears; Appellants had pre-paid the principal from January 1, 1974 up until February or March 1976. Appellants had been making balloon payments. When Appellants went to make a balloon payment in June 1976, the Bank refused the mortgage payment.

Also, if we look at the complaint, paragraph 9, (Appellee Appendix P. 1, 4) we see that Appellant owed Appellee an additional $1,400.00 when the foreclosure was filed August 27, 1976, but by April 5, 1977, that amount was paid in full. (Appellee Appendix P. 6, 9, paragraph 7.)

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